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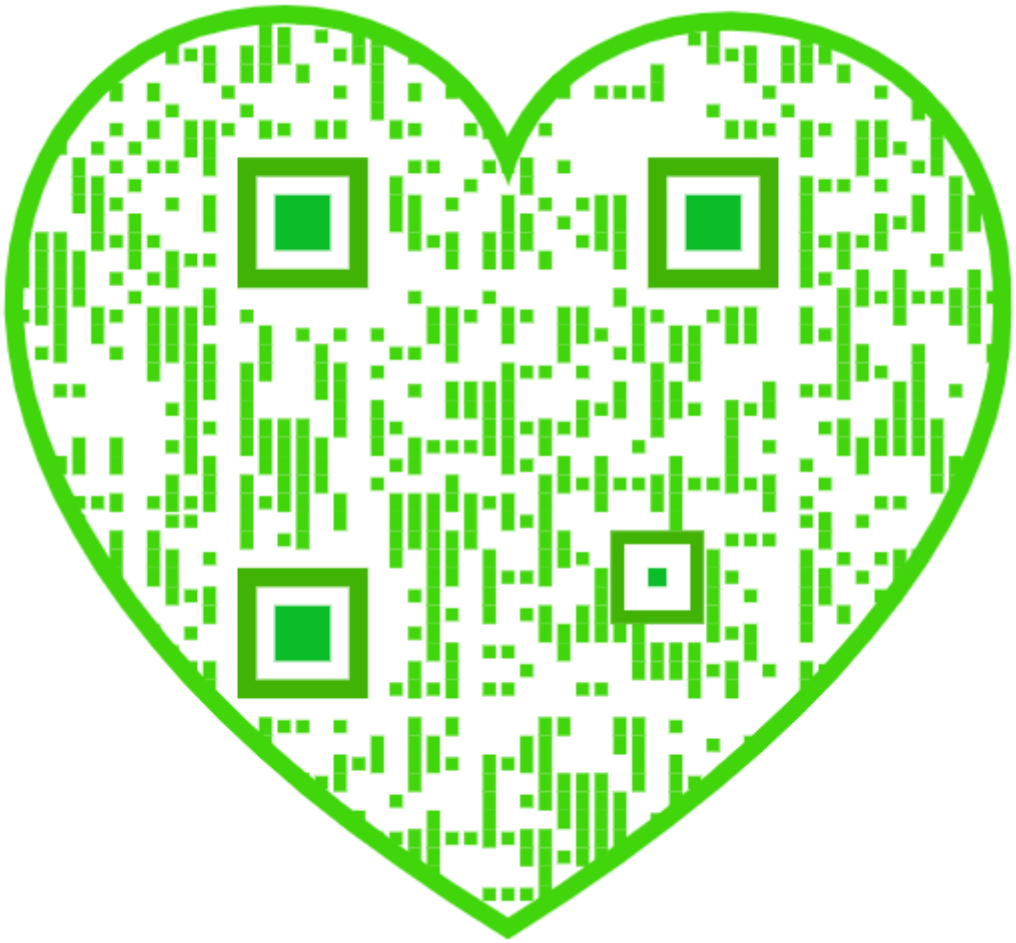

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Law Notes.

Edited by ALBERT GIBSON.

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SOME NOTES.

WITH this Number the "Law Notes" enters upon its fourth year. By a notice in our last Number attention was drawn to the slight alterations intended to be made during 1885, and it is unnecessary to recur to them again. We are convinced that they improve the Magazine, and will be acceptable to our readers.

It has also been determined to continue the Recent Cases in the same simple explanatory style, which we have every reason to know has so largely contributed to the success of the "Law Notes." This novel and peculiar method of treatment was, it may be well at the present moment to remind our readers, introduced by us with the first Number of the Magazine in January, 1882. We claim, indeed, to be the inventors of this style.

In future, references will be given for entering up to many more leading text-books, so as to meet, as far as possible, the libraries of all our readers: for greater convenience, also, we shall give the page reference to the weekly law papers, so that if required a fuller account of the case may be found. We decided to do this in consequence of the many suggestions we receive to add to each case the reference to the report. This, as has been constantly pointed out, is not possible, as our recent cases appear long before the revised and corrected judgments get into the regular Law Reports. The next best plan, therefore, is to give references to the weekly legal papers.

So it seems there has been a decision, *Perkins* v. *Dangerfield*, a Court of Appeal decision, too, that the words, "the judge may at or after the trial direct that judgment be entered for any or either party," occurring in the Rules of Supreme Court, 1875, do not mean that a judge may override the verdict of the jury. The same words occur in the Rules of Supreme Court, 1883; curious that Mr. Justice Manisty should consider that because they occur in a different set of rules a different construction is to be put on the same words; nay, has been put on them; for we understood his Lordship to say he had often adopted this course before, and meant to do so again, which he did a few days after: but if this decision is correct, his Lordship is lacking in his law as much as he is in discretion.

So the sale of Serjeants' Inn, Staple's Inn and Barnard's Inn, and the division of the amounts realized amongst the present owners, is not spoliation according to Lord Bramwell. Not only does Lord Bramwell defend, but he absolutely glories in the spoliation, and regrets that his share of the plunder was not greater. How his Lordship must envy the one solitary ancient of Barnard's Inn who, we understand, pockets the whole spoil in that case. Now had his Lordship the Atlantic for his ink-pot he might run it dry before he would succeed in convincing us that all and every one of these sales are not the grossest and most flagrant misappropriations of corporate funds. We only hope there is some truth in the rumour of a retrospective Act annulling the contracts.

By the way, is not this same Lord Bramwell President of a Property Defence League and not too much Legislation Association, or some such extraordinary title? Is this his Lordship's idea of defending property; do not give us too much legislation, cries his Lordship, especially, we suppose, retrospective legislation: leave us to do as we will with our own property, and with other people's property as well we assume: truly, his Lordship's position is little short of ridiculous. The spoliator of corporate funds posing as a defender of property.

Mr. Justice Kay appears to have a little too grand a notion of the jurisdiction of the Chancery Division, of which he is a prominent judge. His Lordship has again in another case been overruled by the Court of Appeal on a point about infant wards. In *Elliott* v. *Lambert* he declined to allow a mother to take her daughter to Jamaica, the daughter being a ward of Court. The Appeal judges considered this a little too arbitrary, and allowed the ward to depart on conditions.

In common with all our professional brethren we have during the past month had to sign a cheque for that Iniquitous Tax. Our ink curdles with rage as we write. We have been asked by some correspondents to get up a petition. But we are sick of petitions. "Petition me no petitions." The general election approaches; a caucus amongst solicitors to vote for and assist only those candidates for Parliament who pledge themselves to support a bill for the abolition of the tax might be justifiable. Extreme cases require extreme measures. The Certificate Abolition Caucus, who will be hon. secretary?

Can a man concur all by himself? They say it takes two to make a quarrel. We always thought it took two to concur. However, in *Reg.* v. *Bull*, a case

on the Falsification of Accounts Act, 1875, a collector who collected 8*l.* 14*s.* and gave credit only for "5*l.* received on account," which amount was copied by another clerk innocently into the account book, the Court held that the collector could not be held to have falsified the accounts as he did not make the absolute entry; but, said the Court, and a very strong Court, too, he concurred in making it. To this counsel suggested that the other clerk, being innocent, had no concurring mind, and that it took two minds to concur: no matter, said the Court, again, we intend to concur that this evasion of the Act shall not occur again, and they affirmed the conviction.

What is it Mr. Justice Denman has been saying: that if litigants intend to appear in person as much as they have been doing lately, it will become a great question whether the right of personal audience must not be taken away? Here, fetch Magna Charta, the Bill of Rights, Habeas Corpus; this sounds uncommonly like treason to one or other of these great bulwarks of our liberty. "To no freeman shall justice be denied"; "to all shall justice be open"; surely we have read something like this somewhere. What does his Lordship mean? However, much may be pardoned a judge who has had Mrs. Weldon dressing him—we mean, addressing him—for many days.

Grocers must look out. They do not need to be informed that they may mix chicory with coffee; they know that full well. But if they mix dandelion with it, they must remember to pay a half-penny stamp for every quarter of a pound sold. This little bit of Excise law a grocer discovered the other day at the cost of a 5*l.* fine. Now would it not be possible to require a stamp of so large an amount for every quarter pound of chicory mixed with coffee that it would be cheaper to sell pure coffee than the adulterated article? We feel a personal interest on this point; we do like pure coffee.

Bakers, too, have been having a little sad experience of the law. It seems that 6 & 7 Will. IV. c. 37, s. 7, requires every baker when delivering his bread to provide his cart with a correct beam and scales and proper weights. Now one, a certain baker of Draycott, had an arrangement by which he took a quartern loaf once a week to a lady residing some distance from his shop. Now, we do not quite know what a quartern loaf is, but it certainly does not seem much for a week; whether it got stale, gave the lady indigestion and prompted her to prosecute the baker, we cannot tell, there is no evidence. But some one prosecuted the baker for "that his cart was not provided with proper beam and scales;" idly did he plead the loaf was weighed in his shop, practically where the sale took place and the order had been given; but fruitlessly, his shop was not his cart: the justices convicted; the judges of the Divisional Court confirmed his conviction. Householders who want to "roast" their bakers have an opportunity; make them produce from their carts the "proper beam and scales."

We have a grand idea. Suppose we have a statute requiring all milkmen to carry lactometers; test our breakfast milk before our eyes; fine and imprisonment for any milkman vending milk without his lactometer; much more important than weighing a quartern loaf.

There can be no doubt the law as laid down in the "Mignonette" case is correct. The facts stated indubitably amounted to murder; the law being settled we gladly leave the too, too horrible subject.

The "Mignonette" judgment has had one good effect. It has completely smashed Lord Bacon's plank theory. We always had great doubts in our mind about the correctness of that statement of the law. It turns out now that it was not based on authority, and in some way had to do with an island not within our jurisdiction. As a proverb, it has acquired authority in telling, until its dubious origin has been lost in the shadows of the past. Well, it is a good, useful, every-day, knowledge to possess, that the next time one only has a plank to share with a man on the wide, wide ocean, to avoid being hanged for murder you must drown yourself; the old proverb is perverted "That a man who is born to be hanged will never be drowned."

Mr. Duck, of *Duck* v. *Bates* celebrity, has been at it again: applying for an injunction to restrain the performance of "Our Boys" at Royston. Uselessly did Mr. Justice Hawkins plead for the "leading families" who were advertised as supporting the performance; eloquently did his Lordship depict their misery; the only piece of amusement for six months stopped by injunction! Failing this appeal *ad misericordiam*, their Lordships had to inform counsel that interim injunctions are only granted when the matter cannot be otherwise remedied, and to suggest that he would not get his injunction either that day, the next day, or the day after.

In the course of the case, Mr. Justice Hawkins had to remind counsel that you cannot swear by telegraph; although under the next batch of rules this even may be possible. His Lordship doubtless remembers that an American precedent exists that you can swear by telephone, and very badly, too, as the operators complained.

The cock-crowing nuisance threatens to become a pressing question of the day soon. There has been another application to a magistrate to put down a "shrill crowing cock" as a nuisance to the neighbourhood. The magistrate declared that if other persons were called to show it was a public nuisance, he would most certainly send the offending cock to trial. For the time the case was adjourned, to see if the matter could be arranged; *anglicè*, whether the owner could be induced to follow the precedent laid down by the former cock-crowing case, to cook that cock.

There is now a sort of general idea to put down everything and everybody as a nuisance. We are all with that man who wants to put down those blatant bawlers of newspapers on Sunday mornings, who stand at a corner for ten minutes at a stretch, and destroy our sweet Sunday slumbers. Gladly do we hear that the protecting policemen have instructions to move them on.

Then, again, there is a commotion about railway whistles. Certainly some interesting cases on "Nuisance" may be confidently anticipated.

Evidently Mr. Justice Grove and Mr. Justice Hawkins are not evolutionists. They hold that man is not an "animal." When it is desired to build over a disused burial-ground the Metropolitan Board of Works have power to require "the removal of all soil impregnated or mixed with any animal or vegetable substance." We have heard that some men are sponges. We can imagine their Lordships must have included that genus either under animal or vegetable; we have heard of men being "perfect lambs," "owls," nay "asses," but in spite of all this evidence, and Mr. Darwin to boot, the Court declined to consider that a burial-ground in which hundreds of cholera patients had been interred, but which ground was now disused, came under the above bye-law. Consequently, in the eye of the law man is neither an animal nor vegetable; neither did the judges favour us with an "obiter dictum" as to what in their opinion man is.

Telephone companies will be disgusted to find the decision of the Divisional Court affirmed by the Court of Appeal. They are held liable to rates in respect of their poles, wires, &c. This seems only right. By what process, however, does the assessor determine the assessment value of so many poles and so many yards of wire? We feel a curiosity to know.

The tee-total people are much distressed because liquor now comes to the travelling public instead of the travelling public going to the liquor. The United Kingdom Alliance has made a praiseworthy effort to invoke the powers that be to come down on railway refreshment contractors for employing boys to hawk refreshments at the carriage windows. The Inland Revenue appear to think it is no infringement of the Licensing Act: the platform is part of the premises belonging to the licensed portion. Is this not rather straining the meaning of "premises thereunto belonging"? A little more of a stretch and every publican would have the right to hawk liquor up and down the pavement in front of his house. But, after all, how absurd it is to attack the fringe of the drink traffic in this way. If it is wicked and bad to drink on a railway journey, get legislation to put it down, but do not try to persuade people that the fact of having the liquor brought to them instead of having to fetch the liquor ever made one toper more or a toper already more of a toper. Those who want nips followed by naps en route will go and get their flasks filled if no liquor is brought them, and those who do not indulge will not be tempted just because it is brought to the carriage door; at least, the percentage would be so small that they are certainly not worth an Act of Parliament to save them from their own folly.

What is all this cat-a-wauling, or rather cat-bewailing, that we have had in the "Standard." When will people realize that the law is not as stupid as they prefer to believe it. If a man shoots a cat or a dog, he is civilly liable in damages, even if such cat or dog is trespassing in his preserves, but he is not criminally liable unless he wantonly shoots it. Only an owner of a franchise, who has a property in game, has the right to shoot a cat or dog if in pursuit of game, and the game is in imminent danger of destruction; the law is sensible enough to see that a man can have a property in a cat or dog, but none in an animal *feræ naturæ*, and that damages will more easily compensate for the loss of hundreds of hares than the loss of one favourite cat or dog.

We know our friends in the country object to our statement of the law. They are led away by the fact that there is no criminal liability for shooting a cat or dog, and by the absurd decisions of a few J. P. dignitaries, whose prejudices obscure their wisdom: but these decisions do not make the law, they often tend to mar it.

We hear that the Birmingham Watch Committee have decided to prosecute as a "rogue and vagabond" any person selling tickets for bazaars, &c. Now, if the decision is only carried out strictly and impartially, there is a bad time pending for curates, spinsters and other charitable persons who hold that "the end justifies the means." Now, if that Watch Committee

would only make up their minds to abolish bazaars for supplying illustrated pocket handkerchiefs to "niggers, &c.," they would well earn a testimonial at the hands of the grateful multitude.

Our friend, the "Albany Law Journal," has a few funny cases. An innkeeper's liability for a guest's baggage is not diminished but increased by the fact that the guest is too drunk to look after his trunks. With us, drunkenness is an aggravation, with our cousins in Michigan, an extenuation; probably they are right in this case: to the innkeeper doubtless is due the condition of the man.

Is a Pullman sleeping car an inn on wheels? This point, involving a question of liability for loss of jewellery of a passenger while sleeping in his berth, has had to be tackled by the Kentucky Courts. On the principle that the liabilities of innkeepers are not extended to the owners of saloon steamboats, the judges decided that the owners of a Pullman sleeping car are not innkeepers either. Question whether this decision is correct. When you eat, drink, smoke and live in Pullman cars for days and days, as in America, it is certainly a point whether that car is "not an inn on wheels."

The case of *Cleather* v. *Twisden* (see Law Notes, Vol. II., p. 228) has been reversed on appeal. Consequently, where bearer bonds have been deposited with a member of a solicitor's firm by a client for safe custody without the knowledge of the other members, and the bonds are misappropriated by the recipient solicitor, the other partners are not responsible. We hope to return to this case in a future Number.

"There's a good time coming," says the song; but this hopeful view of matters does not at the present time seem particularly applicable to the bar. Barristers we fear are doomed to disappear from the scene altogether. They will have no work to do, and we shall find ere long that the party to an action who appears in person to conduct his own case is the rule and not the exception. Mr. Bradlaugh as representing male, and Mrs. Weldon as representing female, litigants, have set the fashion, and it has recently been followed by Mr. Adams and Dr. Forbes Winslow; and there have been innumerable cases of late in which the suitor has appeared unrepresented by counsel. They have appeared in all the Courts, with the exception, so far, of the House of Lords; and we are under the impression that a lady did once conduct her own case before that august assembly. Truly this is an age of amateurism! Amateur authors, actors and lawyers thrust professionals from the scene, and shortly we shall have no such thing as a professional man.

The careless way in which bills are drafted before their submission to Parliament has become proverbial; and it is a matter of wonder to us that bills can pass through the fiery ordeal of Committee without being purified from the dross of glaring verbal error. The late Yorkshire Registries Act is another example of legislative blundering; the special Autumn Session of 1884 has had to turn its attention from the engrossing subject of the reform of the franchise to the comparatively trivial occupation of passing an Act to amend some purely verbal errors in that statute. Could not some means be devised to prevent the repetition of such inexcusable oversights? Why not have an official "Reader" to the Houses to correct typographical and other errors of a like nature in the draft bills?

Let would-be criminals take warning from another recent case—the notorious "Whalley Will Case." If they devote some of the time which, according to Mr. Gilbert, it is their joy to spend in "listening to the little brook a-gurgling and basking in the sun," to a perusal of this interesting case, they will therefrom learn that science is ever on the track of crime, and that the art of forgery is beset by many difficulties, and that among other things it is not such an easy matter as it seems to dispose of even such simple affairs as lead-pencil marks; Mr. Holmes, one of the expert witnesses called in the case, stated that even if attempts to remove lead-pencil writing seemed successful they after a while re-appeared, and that it was in fact practically impossible to remove or obliterate it entirely. There is no longer any virtue in "injer-ribber"!

Under Order LXV. rule 1, a Judge has power to deprive a successful plaintiff of his costs, but he has this power on the condition precedent only that "good cause" exists for doing so. When this condition is present the power of the Judge cannot be questioned by the Court of Appeal, but that Court may entertain the question as to whether the condition precedent which gives him the power exists. (See *Jones* v. *Curling*, 13 Ch. D. 262.) The question, what is a "good cause"? came before the Court of Appeal the other day in *Felix* v. *Gordon*, and the Court there approved of the definition given in *Cooper* v. *Whittingham* (15 Ch. D. 505), where it was defined to mean, *inter alia*, misconduct in commencing proceedings, or an oppressive or vexatious mode of conducting them. In the case under consideration, as the plaintiff's conduct had not been oppressive, and his demand was not extortionate, the Court held there was no good cause for depriving him of his costs.

CASES OF THE MONTH.

I.—GENERAL CASES.

[The references at the heads of the cases under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1884, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XIX., and the Law Times, Vol. LXXVIII., where further details of the case may be found.

The references at the foot of the cases under Fisher, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., and Tudor, refer respectively to the last editions of Fisher's Digest, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, and Tudor's Conveyancing Cases, and indicate the page at which a note of the decision should be entered.]

If the Owner of a Rent-charge releases part of the Land charged, can he claim the whole Rent out of the rest of the Land?

Booth v. Smith.

(T. 97; W. N. 230; S. J. 98; L. J. 135; L. T. 94.)

Formerly in such a case he lost the right to any part of the rent, but now by 22 & 23 Viet. c. 35, he can claim a proportionate share of the rent according to the value of the portion of the land not released. But he cannot, unless express provision is made to that effect, claim the whole rent out of the unreleased portion.

(Wms. R. P., p. 352; Goodeve, p. 362; Tudor, p. 331.)

Does the Indorsee by way of Mortgage of a Bill of Lading take subject to the liability to pay any Charges there may be in respect of the Goods to which the Bill of Lading relates?

Burdick v. Sewell.

(T. 128; W. N. 230; L. J. 141; L. T. 113.)

Mr. Justice Field held that a person who takes a bill of lading merely as a security for a loan, does not acquire the "property" in the goods under 18 & 19 Viet. c. 111, so as to make him responsible for the freight and charges. (See Law Notes, Vol. II. p. 100.) The Court of Appeal reversed this decision, holding that the indorsee, though taking the bill only as a security, did acquire the property and so was liable to all charges in respect of the goods. (See Law Notes, Vol. III. p. 358.) The House of Lords, however, reversed the decision of the Court of Appeal, directed the judgment of Field, J., to be and re-entered; and so our question is answered in the negative.

(1 Fisher, p. 1304; Newson's Shipping, 2nd ed., pp. 75, 124.)

Under what circumstances will the Court give a Guardian leave to take a Ward of Court out of the Jurisdiction?

In re Callaghan, Elliott v. Lambert.

(T. 91, 105; S. J. 98; L. J. 135; L. T. 94.)

In deciding this question the Court must consider (1) whether it is to the interest of the ward to give the leave; (2) what security the Court had that its order would be obeyed. In the above case the ward was born in Jamaica, but had for several years been in England with her mother and younger brother for the purposes of education. The ward being twenty years of age, the mother, her guardian, wished to return with her to Jamaica, and asked the Court's leave to take the ward out of the jurisdiction. Kay, J., refused the application, considering that there were no special circumstances justifying a departure from the ordinary rule, that a ward must not be removed beyond the control of the Court. But the Court of Appeal considered that if the ward's uncle were appointed co-guardian with the mother, and the guardians gave an undertaking to produce the ward in Court if and when required, there was no objection to granting the leave, and the ward was accordingly permitted to go with her mother to Jamaica.

(Snell, p. 416; Aids, p. 109; 4 Fisher, p. 477.)

Is a Railway Company liable to a Passenger for the unpunctuality of their Trains whereby he suffers Damage?

Cooper v. G. W. R. Co.
Woodgate v. G. W. R. Co.

(T. 101, 133.)

The company is not liable in those cases where notice that they will not be liable is printed by the company on the passengers' tickets and time tables. In other words, a railway company may stipulate for unpunctuality on its own line, but the passenger must have his attention drawn to the stipulation by some notice on the ticket issued to him. It is sufficient if the ticket refer to the time tables which contain a clause that the company will not be liable for want of punctuality. The company, however, is liable if the unpunctuality was caused by the misconduct of the railway servants.

(Indermaur, p. 386; Shirley, p. 63; 1 Fisher, p. 1991.)

Does Sect. 43 of the Conveyancing Act, 1881, apply so as to enable Trustees to apply the Income of Funds for Maintenance of the Infant cestui que trust when the Funds are given on the contingency of the Infant attaining twenty-one, and where, if not so applied, the Infant would not be entitled on attaining twenty-one to the accumulated Income?

In re Dickson, Hill v. Grant.

(W. N. 235; S. J. 115; L. J. 145; L. T. 115.)

It does not; and so in this case, where legacies of 1,000*l.* were given to classes of persons (not being children of the testator) "who should be living at the testator's death and attain twenty-one," and the will contained a residuary gift to all the testator's nephews and nieces living at his death, it was held, on the authority of *In re George* (5 Ch. D. 837; 37 L. T. 204; 47 L. J., Ch. 118), that as the income of the legacies belonged to the residuary legatees whether the legatees attained twenty-one or not, there was no power under the Conveyancing Act to apply the income for the maintenance of the infant legatees.

(Wms. P. P., p. 447; 4 Fisher, p. 484; Snell, p. 442; Aids, p. 111.)

When a married Woman tenant for life petitions the Court for leave to make a Lease of a Settled Estate under Sect. 50 of the Settled Estates Act, 1877, must she be separately examined?

Re Harris's Settled Estate.

(W. N. 136; S. J. 115; L. J. 152; L. T. 116.)

If married prior to the 1st January, 1883, *and* her title to the property which it is desired to lease accrued before that date, she must still undergo a separate examination, for sect. 1 of the Married Women's Property Act, 1882, only applies to property acquired after the Act came into operation.

Compare *Reddell* v. *Errington*, 26 Ch. D. 220.

How much are Trustees justified in Lending on Leasehold Security? Would they ever be justified in Lending on House Property which had never been Let?

Hoey v. Green.

(T. 116; W. N. 236; S. J. 31.)

There is no absolute rule as to the amount to be advanced on leasehold property, but generally trustees are not justified in lending more than one-half the value of such property. Trustees must act with all the circumspection that a prudent owner would act in dealing with his own property; and it was not the act of a prudent man to lend money on house property which had never been let, there being in such a case no tangible property to bring in income; and so in this case the trustees, who had advanced to a builder to the extent of two-thirds of the value of leasehold houses which had never been let, were held responsible for the 1,100*l.* which was lost by the transaction, the builder having gone bankrupt, and the houses having failed to fetch the amount lent by that sum.

(Snell, p. 157; 7 Fisher, p. 234; Aids, p. 36.)

Where in a Separation Deed there is a Covenant by the Husband to allow his Wife free access to the Children of the Marriage, is the Covenant broken by the Husband taking the Children with him abroad to a Country where his Professional Duties call upon him to reside?

Hunt v. Hunt.

(T. 93; W. N. 243; S. J. 99; L. J. 134; L. T. 78.)

The husband was a surgeon in the army, and the separation deed between him and his wife gave him the custody of the children, but allowed the wife full and free access to them. The duties of the husband called him to Egypt, and he proposed to take with him two of the children. His wife sought to prevent this by injunction, on the ground that it would be a breach of the covenant, and deprive her of her right of access to the children. Pearson, J., granted the injunction, but the Court of Appeal reversed his decision. The reasonable construction of the deed was that the wife could not interfere with the place to which the husband reasonably chose to take the children, and if she wished to have access to them, she must follow her husband. The course adopted by the husband might put a difficulty in the wife's way, but it was not an unreasonable difficulty; and so our question is answered in the negative. (4 Fisher, p. 108.)

If a Lessee breaks his Covenant to yield up the Premises in a good state of repair, is he liable to an Action for the breach in a case where the Lessor suffers no Damage, inasmuch as, on the determination of the Tenancy, he pulled down the Premises?

Inderwick v. Leach and others.

(T. 95.)

The lessee is liable in such a case in damages representing the exact amount of dilapidation at

the end of the tenancy, for the lessor has a vested right of action for the breach, which is in no way affected by the fact that he suffers no real injury.

(4 Fisher, p. 1568.)

If A., while walking along a Pavement, sustains a personal Injury, owing to the defective condition of the Pavement, has he any Remedy against the Persons or Corporation who, by Statute, have the sole authority for repairing the Road and Pavement?

Lampard v. The Commissioners of Sewers.

(T. 114.)

The Common Serjeant, before whom this question arose, said no, but gave the plaintiff leave to move. On hearing the case, the Divisional Court confirmed the decision of the Common Serjeant and refused the plaintiff leave to carry the case to the Court of Appeal. There was no evidence that the defendants had knowledge of the defective state of the pavement, and even had there been, it is doubtful if for mere non-repair the defendants were liable. Compare *White* v. *Hindley Local Board*, L. R., 10 Q. B. 219; *Mersey Dock and Harbour Board* v. *Gibbs*, L. R., 1 H. L. 93; and *Borough of Bathurst* v. *Gibbs*, L. R., 4 App. C. 267.

(Underhill's Torts, 4th ed. p. 9; 3 Fisher, p. 2134.)

Do Sums paid by a Life Assurance Company in the shape of Bonuses to their Policy-Holders at the end of a certain period constitute Profits of the Company so as to be assessable to the Income Tax?

Last and London Assurance Corporation.

(W. N. p. 207; S. J. 66; L. J. 122.)

The Court of Appeal, in confirmation of the decision in the Court below (12 Q. B. D. 389), held that they do not. The policy-holders were customers, and the amount paid to them was to induce them to become and remain customers, and so was an expenditure incurred in earning the profits of the business, and it is only the annual profits which are liable to income tax.

(6 Fisher, p. 600.)

If one Tenant in Common expends Money on necessary Repairs to the House, but not for the purpose of preventing the House going to ruin, can he claim Contribution from his Co-Tenant?

Leigh v. Dickeson.

(L. J. 134.)

Pollock, B., decided that he had no right to contribution, and this decision was upheld by the Court of Appeal.

(Shirley, p. 327; 4 Fisher, p. 1569; Indermaur, p. 283.)

In a Foreclosure Action brought by an Equitable Mortgagee, can the Court order a Sale of the Property under Sect. 25 of the Conveyancing Act, 1881?

Oldham v. Stringer.

(W. N. 235; S. J. 115; L. J. 145; L. T. 115.)

That this can be done when there is an agreement to execute a legal mortgage is clear from the decision in *York Union Banking Co.* v. *Artley*, 11 Ch. D. 205. In a more recent case, *Wade* v. *Wilson* (22 Ch. D. 235), a sale was ordered, but it did not appear in this case whether the deposit of title deeds was or not accompanied by an agreement to execute a legal mortgage. In the above case (*Oldham* v. *Stringer*) there was a mere deposit of deeds without any agreement or memorandum, and the Court held that the definitions of "mortgage" and "mortgage money" in the Conveyancing Act were so wide that the Court had power in any foreclosure action to order a sale, whether it is brought by a legal or equitable mortgagee, and in the latter case whether or not accompanied by an agreement to execute a legal mortgage.

(5 Fisher, p. 660; Snell, p. 329; Aids, p. 83.)

If by the Charter of a Banking Corporation it is declared that in all cases in which Shares are transferred the responsibility of the original Holder of the transferred Shares shall continue for Six Months after the Transfer, does the term "Original Holder" signify every Transferor or merely the original Allottee?

Re The Oriental Bank Corporation, Clayton and Harte's Cases.

(L. T. 96.)

The term "original holder" meant the first takers of the shares, and so the six months' responsibility rule only affected them, and not subsequent holders who had transferred their shares.

(Emden's Co. Law, p. 42; 2 Fisher, p. 506.)

Can Trustees under Sect. 43 of the Conveyancing Act, 1881, apply past Accumulation of Income in discharge of past Maintenance?

Re Pitt's Settlement.

(W. N. 225; L. J. 139.)

They have a discretion to do so, Chitty, J., decided in the above case, where infants entitled to a vested interest in property to be transferred to them on attaining twenty-one had been maintained by their father. The trustees had a discretion to apply the income which had been accumulated in recouping the father what he had paid for the infant's maintenance.

(Snell, p. 422; 4 Fisher, p. 484; Aids, p. 111.)

Can a Married Woman with regard to Separate Property elect as a Feme Sole or must the Court elect for her?

In re Quœde's Trusts.

(W. N. 225; S. J. 99; L. J. 139; L. T. 116.)

Chitty, J., said that the result of the Married Women's Property Act, 1882, seemed to be that a married woman taking separate property should be treated for all purposes as a *feme sole*, and that, therefore, she could elect as such, and was in no way bound to submit her election to the discretion of the Court. If there is a restraint on anticipation it is doubtful if she can elect.

(Snell, p. 225; 3 Fisher, p. 887; Aids, p. 51.)

An important Case on Sect. 4 of the Statute of Frauds.

Studds v. Watson.

(T. 83; W. N. 217; S. J. 83; L. J. 131; L. T. 79.)

Under this section (*inter alia*) no action can be brought on a contract for the sale of lands, &c., unless there is a sufficient memorandum duly signed by the party to be charged or his agent. The facts in the above case showed that the plaintiff had agreed to buy the defendant's share in certain house property. The only memoranda of the agreement were two documents (the first signed by Watson, the defendant, the second by his agent) to the following effect:—(Document No. 1.) "Sept. 22, 1882. Received of J. Studds 1*l.* of my share in the Barrett Grove property the sum of 200*l.*" (Document No. 2.) "Mr. Studds—Sir,—If the balance of 199*l.* on account of the purchase of my share of the property be not paid on or before 22nd instant I shall consider the agreement (made Sept. 22, 1882) not any longer binding." The plaintiff relied on these documents as being a sufficient memorandum to satisfy the Statute of Frauds, and North, J., held that read together they showed clearly who the vendor was and who the purchaser was, and what the price was, and what the property, and so were sufficient.

(Shirley, p. 22; Indermaur, p. 54; 7 Fisher, p. 303.)

Can a Solicitor charge a Fee for negotiating a Mortgage in a case where the Mortgagee has been introduced to the Mortgagor by another Person?

In re Weddall, Parker v. Parker.

(T. 73; W. N. 217; S. J. 85; L. J. 139.)

Under rule 11, sub-sect. 5, of the Solicitors' Remuneration Order, a mortgagee's solicitor is entitled to charge a "negotiating fee" when he has "obtained and negotiated" the loan. In the above case one A., a solicitor for the mortgagor, wrote to B. asking him if he knew of any one ready to lend 2,000*l.* on mortgage. B. wrote to C., his mother-in-law, and stated that he had gone into the proposed security. C. wrote to Messrs. Weddall & Parker asking for their advice. Messrs. Weddall investigated the matter, had the property valued, &c., and ultimately, the inquiries being to their satisfaction, C. advanced the money, and the question arose whether Messrs. Weddall were entitled to a negotiating fee. Mr. Justice Pearson decided that they were, and stated that if he were to come to any other conclusion solicitors would have to do half their work for nothing.

(6 Fisher, p. 1925.)

Will the Court dispense with a Restraint on Anticipation under Sect. 39 of the Conveyancing Act, 1881, in order to enable the Children to be maintained in a case where there is no other Fund available?

In re Wood.

(L. J. 138; L. T. 115.)

In this case a fund producing 80*l.* a year was settled on a married woman for life for her separate use, with restraint on anticipation, after her death the fund was given to the children in the usual way, with an ultimate trust for the woman absolutely. There were several children. The husband was a solicitor's clerk, who had been out of employment for some time, and there was no fund applicable for the maintenance of the children. The children, by their next friend, and the woman asked the Court to remove the restraint and allow a

part of the fund to be raised from time to time for the children's maintenance. Kay, J., refused the application. In acting under sect. 39 the Court was bound to consider what was for the benefit of the woman, and could not dispense with the restraint in such a case.

(Snell, p. 371; Aids, p. 107; 4 Fisher, p. 355.)

II.—PRACTICE CASES.

[The references under Snow, Stoney and Gibson, are respectively made to the last editions of Snow & Winstanley's Annual Practice; Stoney & Andrews' Judicature Practice, and Gibson & McLean's Practice of the Courts. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

Practice in Chancery Chambers.

(L. J. 147.)

There being some doubt as to the practice which should be adopted in cases where it is desired, in Chancery chambers, to take the opinion of the judge on some point raised before the chief clerk, Pearson, J., made a statement to the following effect respecting the practice in his chambers: An adjournment to the judge is granted if an application is made to the chief clerk at the time when the summons is heard by him. But if no such application were made, the order made by the chief clerk could only be altered by motion in Court to discharge it. If a party was properly served with the summons but did not attend, and an order was made against him in his absence, the result was the same as if being present he had not asked for an adjournment.

(Gibson, p. 171; 5 Fisher, p. 2013.)

Can leave be given to issue a Writ for Service on a Defendant domiciled in Scotland, where the Action is to recover Rent of Premises in England due under a Lease made to the Defendant?

Agnew v. Usher.

(W. N. 220, 230; S. J. 130; L. J. 132; L. T. 114.)

Leave cannot be granted. The action is one for breach of contract, and so falls within Ord. XI. r. 1 (e), by the concluding words of which the Court is precluded from giving leave when the defendant is domiciled or ordinarily resident in Scotland or Ireland. The case does not fall within rule 1 (b).

(Snow, p. 164; Stoney, p. 138; Gibson, p. Ord. XI. r. 1; 5 Fisher, p. 1670.)

Will the Court order the Plaintiff to give further Particulars of his Demand beyond what appears in his Statement of Claim before the Defendant has put in his Defence?

Blackie v. Osmaston.

(W. N. 222; S. J. 99; L. J. 134; L. T. 114.)

Pearson, J., said no; but the Court of Appeal were of a contrary opinion, and directed the plaintiff to give further particulars. When a plaintiff claims a specific sum he must state what his case is, for the defendant ought to know clearly what he has to meet. In a case where the plaintiff claims an account the Court will not order further particulars.

(Snow, p. 278; Stoney, p. 188; Gibson, p. 95; Ord. XIX. r. 7; 5 Fisher, p. 1764.)

Is a Solicitor to a Plaintiff entitled to an Order under Sect. 28 of 23 & 24 Vict. c. 127, for his Costs of the Action on an Amount recovered under Execution in the Hands of the Sheriff as against a Person who has served a Garnishee Summons on the Sheriff with respect to Moneys in his Hands belonging to the Execution Creditor?

Dallow v. Garrold.

(T. 114; W. N. 231.)

Brett, M. R., was clearly of opinion that the money in the sheriff's hands was "property recovered" within the above section, and that the solicitor was entitled to an order as against the person who had served the garnishee summons; and so an affirmative answer is given to our question.

(Snow, p. 143; Stoney, p. 465; Gibson, p. 239; 6 Fisher, p. 1952.)

Can a Plaintiff in a Foreclosure Action obtain in Chambers, under Ord. XV. rr. 1 and 2, an Order for an Account and Foreclosure?

Davies v. Smith.

(S. J. 115; L. J. 146.)

He can do so in cases where there is no preliminary Question to be tried.

(Snow, p. 192; Stoney, p. 150; Gibson, p. 60; Ord. XV. r. 1; 5 Fisher, p. 1835.)

Can a Third Party served with a Notice for Contribution or Indemnity under Ord. XVI. r. 48, Counterclaim for Relief, not against the Defendant who had served him with the Third Party Notice, but against the original Plaintiff?

Eden v. Weardale Iron and Coal Co.

(W. N. 232; S. J. 130; L. J. 142; L. T. 114.)

It was contended that under sect. 24, as interpreted by sect. 100, of the Judicature Act, 1873, a third party brought in under Ord. XVI. could claim and obtain relief from the plaintiff in the action. The Court of Appeal, however, considered that no provision being made for such a counterclaim in the Rules of Court, it could not be allowed. The plaintiff would be embarrassed if a claim, not in any way connected with the original claim, could be raised against him by a third party. So a negative answer is given to our question. *Quære*, whether a third party can counterclaim against the defendant who served him with the notice.

(Snow, p. 242; Stoney, p. 173; Gibson, p. 104; Ord. XVI. rr. 48, 53; 5 Fisher, p. 1846.)

If an Action of Contract in which the Defendant has paid Money into Court is remitted under 19 & 20 *Vict. c.* 108, *to the County Court to try, and the Plaintiff recover more than the Money paid in, do all the Costs necessarily go to the Plaintiff under Ord. LXV. r.* 4?

Emery v. Sandis.

(L. T. 115.)

At the trial of the above-remitted action in the County Court the plaintiff recovered 2*s.* 3*d.* more than the defendant had paid into Court. No order was made as to costs, and on the defendant's application to a Divisional Court for an order that the plaintiff be not entitled to costs, Stephen and Mathew, JJ., held that they had no power over the costs, but that they must (Ord. LXV. r. 4) follow the event. The Court of Appeal, however, considered that the costs were in the discretion of the Court, and directed that the defendant pay the costs up to the time of payment into Court, and that each party pay his own costs subsequent to that payment.

(Snow, p. 670; Stoney, p. 442; Gibson, p. 100; Ord. LXV. r. 4; 5 Fisher, p. 1924.)

When Money in Court is directed to be paid to a Married Woman, can, in any case, the Affidavit that there is no Settlement, and the separate Examination of the Woman, be dispensed with?

Guest v. Newmes.

(W. N. 227; S. J. 99; L. T. 96.)

Pearson, J., dispensed with these formalities in the above case, on the ground that the sum was under 20*l.*, and allowed the money to be paid out on the joint receipt of husband and wife.

(Snow, p. 772; Supplement to Gibson and McLean's Practice, p. 13; and Funds Rules, 1884, No. 61; 5 Fisher, p. 1710.)

Has the Divorce Division power to order Interrogatories to be administered in a Suit for Nullity of Marriage?

Harvey v. Lovekin.

(T. 136; W. N. 232; S. J. 115; L. J. 142.)

It has, decided the Court of Appeal, and for two reasons:—First, because the Ecclesiastical Courts used to allow interrogatories in such a suit, and the old practice of the Ecclesiastical Courts has not been interfered with by the Judicature Act; and, secondly, because even if the power did not exist in the Ecclesiastical Courts, yet it is given to the Divorce Division by sects. 16 and 23 of the Judicature Act, 1873, under which each and every part of the High Court has all the powers which belonged to any of the Courts absorbed in it, and this notwithstanding the Divorce Division retains, under Ord. LXVIII. r. 5, its old procedure unaffected bythe Judicature Rules.

(Snow, p. 706; Stoney, p. 6; Gibson, p. 327.)

Has the Court power to commit a Person to Prison for disobeying an Order of the Court when the disobedience was not wilful? Could the Court order such a Person to pay the Costs of an Application to commit?

Hewitt v. Mansel.

(S. J. 66.)

Both these questions are affirmatively answered. In the above case, a receiver had been ordered by the Court to withdraw certain notices he had served on the tenants of the property. Instead of doing this himself, he directed an agent to withdraw the notices, and the agent failed to do so. Hereupon an application was made to commit

the receiver for contempt: the judge refused to commit, but ordered the receiver to pay the costs, and on appeal it was held that the order could not be interfered with. The judge had a discretion as to costs, and he had exercised it wisely, since the receiver had been guilty of negligence.

(Snow, p. 499; Stoney, p. 322; 5 Fisher, p. 2035.)

Must a Plaintiff who is a Defaulter on the Stock Exchange give Security for Costs?

Hinde v. Hasken.

(T. 94.)

It was contended that, as the plaintiff in such a case was suing, not for his own benefit, but for the benefit of the official assignee of the Stock Exchange, that he ought to be compelled to give security for costs in the same way as a trustee in bankruptcy. The Divisional Court, however, confirming the decision of Field, J., held that there was no ground for compelling security to be given as the plaintiff was not a mere nominal plaintiff.

(Snow, p. 6171; Stoney, p. 443; Gibson, p. 96; Ord. LXV. r. 6; 5 Fisher, p. 1782.)

Is a Month's Notice necessary, under Ord. LXIV. r. 13, before issuing Execution on a Judgment obtained more than a Year ago?

Houlston v. Woodward.

(L. T. 113.)

It is not, for the word "proceeding" used in the order signifies a proceeding "towards," and not after, judgment.

(Snow, p. 658; Stoney, p. 435; Gibson, p. 252; Ord. LXIV. r. 13; 5 Fisher, p. 2011.)

Should an Appeal from an Order made on a Petition to wind up a Company be entered in the Interlocutory or the final List of Appeals?

In re The Globe General Insurance Co.

(S. J. 65.)

In the final list, for though, as regards the time for appealing, the order is regarded as interlocutory (see Ord. LVIII. r. 9), yet the nature of the order is final, and it must be heard as a final appeal.

(Snow, p. 616; Stoney, p. 468; Gibson, p. 256; Ord. LVIII. r. 9; 5 Fisher, p. 1802.)

If an Appellant withdraws his Notice of Appeal does a Cross Notice of Appeal given by the Respondent necessarily fall through by the Withdrawal?

In re Mason, Mason v. Cattley.

(L. J. 121.)

It does not, and in the above case the Court of Appeal allowed the cross notice to be substituted for the original (withdrawn) appeal.

(Snow, p. 614; Stoney, p. 406; Gibson, p. 258; Ord. LVIII. r. 6; 5 Fisher, p. 2037.)

If an Action of Contract is remitted to the County Court for Trial under Sect. 26 of 19 & 20 Vict. c. 108, must the Application for a New Trial be ex parte or on Notice of Motion under Ord. XXXIX.?

Pritchard v. Pritchard.

(T. 116; S. J. 101; L. J. 140; L. T. 97.)

The application must be *ex parte*, in the same way as if the action had been commenced in the County Court. This follows *Matthews* v. *Ovey*, L. N., Vol. III. p. 234.

(Snow, pp. 472, 474; Stoney, p. 364; Gibson, p. 734; Ord. LII. r. 4; 5 Fisher, p. 1965.)

In an Action for Breach of Promise of Marriage the Plaintiff recovers less than 50l. Are the Costs taxed on the County Court or on the High Court Scale?

Saywood v. Cross.

(T. 90; S. J. 86; L. J. 132; L. T. 79.)

In other words, does Ord. LXV. r. 12, apply? It does not—it only applies to those actions of contract which can be commenced in the County Court, and consequently has no application to actions for breach of promise of marriage, which do not fall within the jurisdiction of the County Courts. So that the costs in such actions are still, without an order, no matter how small a sum is recovered, taxed on the High Court scale.

(Snow, p. 675; Stoney, p. 446; Gibson, p. 246; Ord. LXV. r. 12; 5 Fisher, p. 1924.)

If a Writ is issued for a Liquidated Demand, and the Defendant does not appear, can the Plaintiff at any time sign Judgment for default of Appearance?

Webster v. Myer.

(W. N. 223; S. J. 83; L. J. 136; L. T. 94.)

The plaintiff cannot do so after the expiration of a year from the service of the writ, except upon

giving a month's notice to the defendant under Ord. LXIV. r. 13. That rule requires a month's notice before any proceeding can be taken after a year has elapsed since the last proceeding, and the Court of Appeal considered that the swearing of the necessary affidavit of service for the purpose of signing judgment was taking a proceeding within the meaning of the rule.

(Snow, p. 658; Stoney, p. 435; Gibson, p. 252; Ord. LXIV. r. 13; 5 Fisher, p. 2011.)

If A., when on board Ship B., is killed by a Collision caused by the negligent Navigation of Ship C., can A.'s Personal Representative proceed in Rem against Ship C. in order to recover Damages for the Loss sustained by A.'s Death?

The Vera Cruz.

(T. 111; W. N. 222; L. J. 133; L. T. 94.)

Mr. Justice Butt thought that an action *in rem* lay in such a case, but his decision was reversed by the Court of Appeal (see 9 P. D. 96; 53 L. J., P. D. & A. 33), and the House of Lords has upheld the decision of the Court of Appeal. An action for damages in respect of damage done by a ship, brought under sects. 7 and 35 of the Admiralty Act, 1861, could not be brought in the Probate, Divorce and Admiralty Division, and consequently the action under those sections could not be an action *in rem*.

(E. Smith's Admiralty, 2nd ed. p. 56.)

III.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Ringwood and Baldwin are made respectively to the last editions of Robson, Yate-Lee, Ringwood and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

Is the Trustee of a Bankrupt liable to pay the Costs of an Appeal in an Action commenced against the Bankrupt before Bankruptcy?

Borneman v. Wilson.

(S. J. 66.)

An order had been made against the bankrupt, and he had given notice of appeal from the order. Before the appeal was heard he became bankrupt, and the plaintiff obtained an order (under Ord. XVII.) making the trustee in bankruptcy defendant. On the order being served the trustee gave notice that he would not proceed with the appeal. An appearance was then entered for the trustee. The appeal not having been removed from the lists came on for hearing, and the question we have set out arose. The Court of Appeal held that the trustee could not blow "hot and cold;" he had elected to take up the action, and he must pay the costs of the abortive appeal. He could not "approbate and reprobate."

(Robson, p. 662; Y.-Lee, 479; Baldwin, p. 246; Ringwood, p. 152; Snow, p. 252; 1 Fisher, p. 1489.)

If Goods belonging to Third Persons are in the Hands of a Debtor when a Receiving Order is made, is the Official Receiver justified in applying to the Court for an Order before he hands over the Goods to the true Owners?

In re Mahler, Ex parte Honygar.

(S. J. 85; L. J. 132; L. T. 80.)

He is not, under ordinary circumstances. It is his duty to make inquiries into the facts of the case, and after he has made inquiry into the facts of the case to take upon himself the responsibility of retaining or delivering over the goods. The principle of this case was followed in

Ex parte Turquand, In re Parkers

(W. N. 219; S. J. 85; L. J. 131),

in which Cave, J., said, "The Court does not sit for the purpose of assisting the official receiver or the trustee in the management of the estate, and they have no right to come before it for the purpose of getting its opinion on questions of that sort. . . . Where there is no legal question to be decided they have no right to come to the Court."

Can a mere Trustee of a Debt present a Bankruptcy Petition against the Debtor without the Concurrence in the Petition of the Cestui que Trust?

In re Hastings, Ex parte Dearle.

(W. N. 231; S. J. 117; L. J. 142.)

He cannot, for the *cestui que trust*, if capable of dealing with the debt, must be joined as co-petitioner. This was the practice under the Act of 1869 (see *Ex parte Colley*, 9 Ch. D. 307; 47 L. J., Bk. 97), and is the practice to be followed under the Act of 1883.

(Robson, p. 201; Y.-Lee, p. 60; Ringwood, p. 24; Baldwin, p. 39, sects. 5 and 6; 1 Fisher, p. 778.)

Has the Registrar power under sect. 83 *of the Bankruptcy Act,* 1869 (*sects.* 84 *and* 85 *of the Act of* 1883), *to remove one of several Trustees appointed by the Creditors?*

Re Mansell, Ex parte Newitt.

(T. 98; W. N. 222; S. J. 101; L. J. 134; L. T. 114.)

In the above case, one of two trustees had so acted as to obstruct the realization of the estate. The registrar removed the obstructing trustee, leaving the other to act. It was objected that he had no jurisdiction to do this, on the ground that the section only authorized the removal of all the trustees. The Court of Appeal, however, considered that the registrar had acted within his power, for on "cause being shown" he had a discretion to remove "any trustee," and the practice under the Bankruptcy Act of George 4th's reign (6 Geo. 4, c. 14), not to remove one assignee without the others, was no longer in force. And so our question is answered in the affirmative.

(Robson, p. 633; Y.-Lee, p. 500; Ringwood, p. 102; Baldwin, p. 108, sect. 83; 1 Fisher, p. 823.)

Are the statutory Powers conferred on Tenants for Life by the Settled Land Act suspended in the event of his becoming Bankrupt?

In re Mansel's Settled Estates.

(W. N. 209; L. T. 78.)

They are not, nor do they pass to the trustee in bankruptcy, but remain vested in the tenant for life under sect. 56, sub-s. 2. If it is desirable that the powers be exercised, and the tenant for life contumaciously refuse to act, the Court will not allow the trustees of the settlement to exercise the powers, but will itself make such an order as may be right to meet the necessities of the case.

(Robson, p. 496; Y.-Lee, p. 467; Ringwood, p. 115; Baldwin, p. 149, sect. 56; 1 Fisher, p. 825.)

If a Composition is accepted under sect. 18, *and a Trustee appointed, what is the Position of the Official Receiver, who, on the Receiving Order being made, expended Money in carrying on the Business of the Bankrupt?*

In re Taylor, Ex parte an Official Receiver.

(W. N. 219; S. J. 84.)

He is bound, under rule 163, to give the trustee the possession of the debtor's property and premises, but he is entitled to an order giving him a first charge on the assets which come to the hands of the trustee.

(Robson, p. 399; Y.-Lee, p. 647; Ringwood, p. 122; Baldwin, p. 75, sect. 18.)

If a Petitioning Creditor's Debt is a Judgment Debt, can the Court stay the Proceedings in the Petition, if it is shown that an Appeal from the Judgment is pending?

In re Rhodes, Ex parte Heyworth.

(W. N. 215; S. J. 83; L. J. 129.)

The Court has a discretion to do so if the act of bankruptcy relied upon is the non-compliance with a bankruptcy notice to pay the judgment debt. (Sect. 7, sub-sect. 4.) The Court of Appeal said that the discretion to stay the proceedings until the appeal was determined should only be exercised if there was evidence of the *bona fides* of the appeal. The Court would not interfere with the exercise of this discretion by the registrar unless clearly satisfied that he was wrong. It would be monstrous to make a receiving order while a *bonâ fide* appeal was pending.

(Robson, p. 220; Y.-Lee, p. 80; Ringwood, p. 38; Baldwin, p. 67, sect. 7; 1 Fisher, p. 778.)

Course adopted by the Court in connection with the Discharge of a Bankrupt who had been guilty of rash and hazardous Speculation.

In re Seymour Salaman.

(T. 78.)

In this case a solicitor entered into a very heavy building speculation, which brought about his insolvency. The speculation was carried on with borrowed money. The Court considered that the speculation was "rash and hazardous" within the meaning of the Bankruptcy Act, 1883, since it was not a legitimate speculation, and granted the discharge of the bankrupt subject to the following conditions: that he filed annually a verified statement of his earnings and money, and, after retaining a specified sum for the support of himself and family, he pay over the balance for the benefit of his creditors until he had paid a dividend of 10*s.* in the pound.

(Enter in Robson, p. 710; Y.-Lee, p. 151; Ringwood, p. 128.)

IV.—CRIMINAL CASES.

[The references under Harris, Stephen, Harrison, and Stone are respectively made to the last editions of Harris' Criminal Law, Stephen's Digest of the Law of Crimes, Harrison's Guide to Crimes, and Stone's Justices Manual.]

Is a Shipwrecked Person in a Boat with others on the wide Ocean, when suffering from the pangs of Hunger, and being in fact in a state of Starvation, justified in Killing another in a similar but worse state in order that he may save his own Life and the Lives of others in the Boat with him, by drinking the Blood and eating the Flesh of the Person killed?

Regina v. Dudley and Another ("The Mignonette Case").

(T. 118; L. J. 148; L. T. 118.)

The menace of death does not excuse murder. One man must not kill an innocent person to save his own life, though he may kill a person who assails him, if such killing is necessary to preserve his own life. In other words, no one is justified in killing another unless there is "necessity" for it. That there is a "necessity" to take another's life is admitted when that other is the assailant and nothing less will stop his assault. But there is no necessity to take the life of an innocent person in order to preserve the life of the killer; there is no unqualified necessity to preserve one's own life—"*Necesse est ut eam non est vivam.*" In the case in question the prisoners ought rather to have sacrificed their own lives in order that their companions might live, rather than kill one of their companions in order that they might live, and the answer to our question is in the negative. If the circumstances under which the prisoners killed their companion were regarded as constituting such a "necessity" as to justify the homicide, a principle would be established which might be made the legal cloak for unbridled passion and atrocious crime. The dictum of Lord Bacon that "if divers be in danger of drowning by the casting away of some boat or bark, and one of them gets to some plank or on the boat's side to keep himself above water, and another, to save his life, thrust him from it, whereby he is drowned, this is neither *se defendendo* nor by misadventure, but *justifiable*," was not considered a correct statement of the law.

(Harris, p 155; Stephen, p. 157; Harrison, p. 42; 2 Fisher, p. 2036.)

Under the Bastardy Act, 1872, and the Summary Jurisdiction (Powers) Act, 1881, have the Justices Jurisdiction to issue a Summons on behalf of a Woman domiciled in England against a Defendant domiciled in Scotland?

Berkely v. The Justices of the Peace for Sunderland and Duncan.

(T. 118; W. N. 230; L. J. 141.)

One A., a single woman, having given birth to an illegitimate child in Sunderland, issued a summons against B., who resided in Scotland, calling upon B. to show cause why he should not pay a certain weekly sum for the maintenance of the child of whom, it was alleged, he was the father. The summons was duly served, and at the hearing objection was taken that the justices could not hear the case. The objection was allowed, and the decision of the justices was upheld, first by the Divisional Court, then by the Court of Appeal, and afterwards by the House of Lords; and so our question is answered in the negative.

(Stone, p. 150; 1 Fisher, p. 1524.)

Are Overseers of the Poor justified in incurring reasonable Expenses in opposing a Private Bill in Parliament, which seeks to impose an extra Burden on Poor-Rate Payers?

Regina v. Sibly.

(L. J. 144.)

They are, and the auditor is therefore justified in allowing such expenses in the overseers' accounts. The principle laid down in *Rex* v. *The Inhabitants of Essex* (4 Term R. 561) was, the Court of Appeal considered, applicable.

(5 Fisher, p. 1423.)

What constitutes a Public Place within the meaning of 14 & 15 Vict. c. 100, s. 29?

Regina v. Wellard.

(W. N. 140; L. J. 136; L. T. 97.)

The prisoner had induced eight little girls to go with him for some distance along a public footpath, and then to turn off with him on to the marsh at Northfleet. When on the marsh, the prisoner lay down and indecently exposed his person to the children. The prisoner and the girls had no right on the marsh, and were in fact trespassers; but the evidence showed that every

one who wished went on to the marsh without any interference. The prisoner was charged and convicted of having exposed his person in a "public place," and the point of law was reserved whether the marsh could be considered as a "public place." The Court for Crown Cases Reserved considered that it was, and upheld the conviction.

(Harris, p. 137; Stephen, p. 115; Harrison, p. 128; 2 Fisher, p. 2117; Stone, p. 806.)

Does 6 & 7 Will. 4, c. 37, s. 7, which requires a Baker to be provided with a correct Beam and Scales and Weights, so that a Customer may see the Bread weighed, apply to the Delivery of Bread from a Cart to Customers who have previously ordered the Bread?

Ridgway (App.) v. Ward (Resp.).

(T. 112; W. N. 228; L. J. 140; L. T. 96.)

It does, and the conviction of the appellant for sending out his servant with bread for delivery to his customers without the proper scales, &c., was upheld by the Queen's Bench Division, though the evidence showed that the customers had not required the bread to be weighed, and there was no allegation that it was not of proper weight. The object of the Act was, that any customer who wished could see a loaf sold to him weighed if he wished, and the real sale of the loaf took place when it was actually delivered to the customer.

(Stone, p. 156.)

HOMICIDE.

Of all branches of law there is none of deeper interest to all men, lawyers and laymen alike, than the law relating to crime. And the reason of this is not far to seek, for we can easily understand it when we consider that it is a topic which touches everyone. The law of real property is of but little interest to those who do not possess land and never hope to do so; no one cares much about the law as to patent rights who is not an inventor; and, in general, the attractions of law are not so powerful as to incite any one to the study of it except lawyers, unless they happen to be concerned in some particular point which requires a knowledge of law to be properly understood. But the subject of crime and the laws which define it, which regulate its punishment and aim at its prevention, are matters upon which all display the keenest interest; for it is felt that however exalted or however humble an individual may be, he always stands in need of the protection of these laws, and moreover cannot be sure that he may not at some time, under circumstances which may arise, be guilty of an offence against them. And of all the subjects with which the criminal law deals none is more attractive than that of homicide; for, after all, there is nothing of deeper concern than the preservation and protection of human life. Compared with the right to the security of the person, all other considerations are inferior; his claim to the bare right of existence is the last one which a man will abandon.

We think, then, that we need offer no apology for introducing here a few papers on the law relating to homicide; but we will add that the difficulty of the subject, the intricacy and the seeming confusion and conflicting nature of the law on the point and the absence of any authoritative definition of the terms "justifiable homicide," "excusable homicide," "manslaughter" and "murder" fully justify us in occupying a little space in endeavouring to set before our readers what seems to be, as far as we can judge, the law on the subject. What, then, is homicide? The simplest and yet the most comprehensive definition of it seems to be, that it is "the killing of a human being by a human being." Now, at first sight, this definition looks simple enough; but, when it is taken into careful consideration, difficulties immediately begin to appear. What, for instance, constitutes a "human being"? And what amounts to a "killing"? One has only to think of the almost innumerable ways by which a man may encompass the death of a fellow mortal, of the countless variety of circumstances under which a human being may meet his death at the hands of another human being, to see that the term "killing" is one not easily or lightly to be defined. And it must be borne in mind that the law deals not with moral but with legal guilt, and what may be morally a "killing" may not be legally so. For instance, a case like the following might arise:—A. tells to B. certain facts about C., in the hopes that acting on those facts B. will murder C., and with the object of bringing about the death of C. But he does not in any way suggest to B. that C. should be murdered; nevertheless B. does murder C. Now there can be no doubt that morally the death of C. lies at A.'s

door, though he did not actually strike the fatal blow, nor even go so far as to counsel or hint the commission of the crime. But has A. killed C. in a legal sense? This is a point we shall discuss hereafter, and we only quote it to show that the meaning of the word "killing" is not one which one may be permitted hastily to define.

We propose, then, in the first place, to consider this definition of homicide, and in doing so to have regard to the two points—(i.) what is a "human being"? and (ii.) what amounts to a "killing" in a legal sense?

(i.) *What is a Human Being?*

Under this head we shall have two questions to consider: (A) When does a person become a human being; and (B) Can a person ever cease to be a human being so as to forfeit that right to the protection of his life which the law extends to every individual coming within this description?

(A) The answer to this question to be completely given would involve an excursion into the domains of biology, for it depends upon the important point, when does the fœtus in the womb begin to have an existence independent from that of the mother? The importance of this can be easily seen, because it is quite possible to destroy the fœtus without destroying the life of the mother. What is wanted to be known, then, is, when is the life of the fœtus a separate individual existence, so that the taking away of it can amount to homicide? With the ancients it seems to have been considered that the child until it had been completely disconnected from its mother's body was an inseparable part of the mother, and that she might do what she pleased with it without being guilty of any crime. Consequently, not only was it no crime to deprive such a child of life, but there was no such offence known to the law as the procuring of abortion; on the contrary, abortion was actually advocated. Our modern law recognizes the illegality of all attempts to prevent the coming into existence of a human being by enacting that it is a felony for a woman being with child to administer to herself any drug with intent to procure her own miscarriage; or for any other person to do the same with a similar intention, whether the woman be with child or not. (24 & 25 Vict. c. 100, s. 58.) But even when the child was born alive, the ancients in many cases thought it either no crime at all or a very venial one to kill it. Thus the Greeks had no scruples in making away with diseased or deformed children, and the Romans thought themselves justified in exposing them if they were deformed. Indeed we are told that it was not till A.D. 374 that infanticide was made a capital offence. Among savage races, too, there is but little predilection as to the sacredness of infantile life; among some of the Indian tribes of South America, for instance, it is the custom for the mother to kill all the children but one, selecting the one which is likely to live longest. But our modern English law is very strict on the point, and not only makes the abandoning or exposing of it, if under the age of two years, in such a manner as to endanger its health or cause it permanent injury, a misdemeanor (24 & 25 Vict. c. 100, s. 27), but if the child dies, it will amount to murder.

We must return now to our question, when does a child acquire a separate existence? To begin with, it is in all cases a question of fact to be established by the evidence of medical witnesses. But it may be useful to set out the opinion of various judges on the subject, as appearing from charges delivered by them to juries at some assize trials. In *R.* v. *Poulton* (5 C. & P. 329), "being" was defined to mean that "the whole body must be brought into the world. It is not sufficient that the child has respired, for it may respire in the progress of its birth." In *R.* v. *Brain* it was said that it was not essential that the child should have breathed, for many children born alive yet do not breathe for some time after birth. The idea that breathing was not essential, or, taken alone, sufficient, was further developed in *R.* v. *Handley*, where it was said that to constitute a living human being it was necessary that it should be "breathing and living by reason of breathing through its own lungs alone, and existing as a living child, without deriving any of its living or power of living by or through any connection with its mother." Later on it seems to have been established that there must have been independent circulation. Thus, in *R.* v. *Enoch* (5 C. & P. 329), this independent circulation was stated to be essential; and in *R.* v. *Sellis* (7 C. & P. 850), the Court said, "You must be satisfied that the entire child was actually born into the world in a living state. The fact of its having breathed is not a decisive proof that it was born alive. It may have breathed and yet died before birth." And lastly, in *R.* v. *Trilloe* (C. & M. 650), it was laid down that a child wholly

produced from the body of its mother and having independent circulation was a human being, though still attached to her by the umbilical cord.

From these decisions, then, we may deduce that a child becomes a human being under the following state of affairs:

(a) It must have proceeded from its mother's body; but

(b) It is not essential that the umbilical cord should have been divided; and

(c) It is not sufficient or essential that it should have breathed. Thus, if the child is still in its mother's womb, even though it has breathed, it is not a human being capable of being killed: nor can a child be, legally speaking, "killed" in the act of birth.

(B) The next point we should consider is, when does a person cease to be a human being? According to the English law, this is not until the person is dead. However old he may be, he has still the right to enjoy such portion of life as may be left to him, though he may be, in Shakespere's words, "sans eyes, sans teeth, sans everything." Again, an idiot or a lunatic are just as fully entitled to have their lives protected by the law as rational persons; and if a person is sick to the point of death, and of so painful a malady that it would be a mercy to put him out of his sufferings, yet to do so would in the eye of the law be downright murder. All nations are not so particular as this, for we are told that in Alaska, old, sick and useless persons are put to death out of kindness and affection by their relations. Similar practices prevail among the Fijians and the Kaffirs.

But circumstances may occur under which a human being forfeits his right to have his life protected by the law. This was formerly the case when a man was outlawed for treason or felony. He was said to have a *caput lupinum*, and "might be knocked on the head like a wolf by any one that met him." (Co. Lit. 128.) But later on this savage principle was abrogated, and it was holden to be murder to kill an outlaw wilfully or wantonly, except in the endeavour to arrest him.

But there is still one case at the present day when a human being may be deprived of life without legally killing him. This is where he is an alien enemy, and his life is taken in the "heat of war." Whatever moral responsibility the slayer may be saddled with, he incurs none legally.

We do not know that there are any further limitations of the meaning of the term "a human being."

We have still to look at another side of the question and consider the position of the person, who deprives another of life, as a human being. It is self-evident that here no question of the living of the person who slays another can occur. Unless he was possessed of life himself he could not very well take another's. But it may be said that the question of killing will not be raised when the slayer is an infant under the age of seven. At any rate he cannot when under that age be guilty of a criminal killing. While under this age he is presumed to be "*doli incapax*," and the presumption cannot be rebutted: but although the same presumption of his incapacity to commit crime prevails until he has passed the age of fourteen, it may be shown affirmatively that he has sufficient capacity to know that his act was wrong, and if this be shown he may be legally convicted of crime.

UNPUNCTUALITY.

That energetic and irritable Englishmen should, for upwards of fifty years, have travelled, as is their wont, either for pleasure or business, unceasingly to and fro, and never yet legally tried the point as to the liability of railway companies for the unpunctuality of trains, goes far to prove either that the Englishman is less irritable than generally credited, or that the relief of writing to the "Times" is sufficient safety-valve for all the ills of nineteenth-century life, or lastly, and more probably, that both public and companies have been in happy ignorance of their rights and liabilities. It is, indeed, scarcely credible that this simple point in railway law has not, till the last month, ever been authoritatively decided; at the same time it is curious that we should now not only have one but two decisions, one a judgment of the High Court, the other of a Divisional Court, representing in the aggregate the opinions of three learned judges.

The public doubtless even now will decline to believe that the law as established by these cases, that the companies are not liable, is correct; they will adduce in proof cases in which they themselves have personally suffered inconvenience through the unpunctuality of trains; but knowing

the law and that the condition of the company was unreasonable and illegal, and "only incorporated, Sir, to humbug the public," they took cabs, special trains, postchaises, anything, in fact, and "By Jove, Sir, the company paid up without a murmur." We well believe it; we also know of frequent cases in which it has been done; we can well pardon the public for a determination to cling to the old and acceptable law rather than give in adhesion to this new and distasteful rule. Nay, lawyers themselves may well be pardoned, also, for having entertained similar opinions, for their own leading common-law text books make statements tending to the same conclusions. Unwillingly, indeed, do we put pen to paper to destroy this too, too pleasing fallacy; nay, were it not certain that these decisions must come to the notice of directors, we would ourselves willingly enter into any conspiracy having for its object the suppression of these cases. But as it is not possible to ensure the ignorance of the directors, naught remains but to admit that the old ideas were bad law, to make known the new law, and to reflect with comfort that the principle recently laid down in connection with the *Dobbs' case*, that payments made under a mistaken notion of the law cannot be recovered back, that this principle must apply also to the payments made us by companies for cabs, &c. in days now, alas! gone for ever.

We will now briefly state the facts in *Woodgate* v. *Great Western Railway*, the case which came before the Divisional Court, consisting of Mr. Justice Hawkins and Mr. Justice A. L. Smith. One Woodgate took a ticket to, let us say Z.; this ticket contained the usual notice that it was issued subject to the rules and regulations of the company, one of these, of course, being that the company would not be liable for delay unless it arose through the misconduct of their own servants. Consequent on excessive traffic at Christmas, the train arrived ninety minutes late at X., the junction at which the plaintiff, Woodgate, was to change to proceed to his destination, Z. The local train, not unnaturally, had long since departed; the station master declined to put on a special, and the plaintiff was left to amuse himself, till the arrival of a luggage train, by testing the therometric perceptions of his body by exposure, on an uncovered platform, to a searching east wind and solacing himself for the loss of his Christmas dinner by the contemplation of jam-tarts and non-alcoholic drinks at a most uninviting refreshment bar. On arrival of a luggage train, he was accommodated in a second-class carriage, although he possessed a first-class ticket, and tacked on to the end of the "luggager," going his way a sadder but revengeful man. His revenge took the form of a County Court action, in which he recovered in the whole 1*l.* for damages; the company, most certainly, in familiar phraseology, "put up" to the unsettled state of the law, appealed, and the Divisional Court unanimously decided in their favour, and, in spite of earnest entreaty on the part of the plaintiff, declined to give leave to appeal.

Now for the grounds on which this decision proceeds. The plaintiff, said the Court, had reasonable notice of the terms on which he would be carried; the delay could not for a moment be held to have been caused by the wilful misconduct of the company's servants; not even the refusal of the station master to allow a special train, for had he done so, he might have caused an accident, unless he had communicated in writing with every station; the condition must therefore be held reasonable, and the company protected; but a few arguments on the other side may be adduced—points which the plaintiff appeared not to have placed before the Court. The time was merry Christmas; not only do railway companies expect at that festive season a great increase in traffic—nay, they go forth and tout for it—each company advertises that it carries the too-confiding public to its destination quicker than its rival. An ordinary man who contracts to do a certain thing within a certain time, failing to do so, would be held liable in damages; no Court would allow him to take the other man's money, and then give that other man a ticket limiting his liability for damages for failing to do the very thing he has boasted and advertised himself to do. Further, did not the Court say that there was no tittle of evidence to show the delay was occasioned by the fault of the servants of the company? Who then is responsible for the arrangement of holiday traffic? surely the traffic manager, most certainly a servant of the company. To allow the other officers to bind him by advertisement to run more trains, to undertake more traffic than can, as he knows full well, be properly undertaken, is surely misconduct, fault, call it what you will, on the part of a servant of the company. Then, again, there is the last and not least important point of previous decisions: in the controversy that has arisen in these decisions we have seen many cases referred to, but the

case of *Le Blanche* v. *L. & N. W. Rail. Co.* (44 L. T. 668), appears the most applicable. In this case, the plaintiff, through unpunctuality of one train, lost another train, and took a "special." The Court of Appeal held that, under the peculiar circumstances, he being on a pleasure trip only, the taking the "special" was unreasonable, but that he was certainly entitled to damages for breach of the condition to use all reasonable care and diligence to insure the punctuality of the trains. Observe, how strong the inference; only under the particular circumstances was it unreasonable to take a "special;" to our minds, the latter part of the decision distinctly justifies the statement hitherto found in all leading books, that companies are liable for unpunctuality, and that a condition limiting this liability is unreasonable. One cannot refrain from inquiring, was this decision brought to the notice of the judges?

Let us now turn to the other case of Cooper, curiously enough against the Great Western Railway also; we cannot but believe that they are indebted for their successes to the ingenuity of some legal mind, that they were prompted by some man of cunning, to take the unusual course of resisting. Here Cooper was coming from Waterford by boat and train timed to run in connection; owing to inclement weather the boat was delayed; the boat-train waited, but missed the main-line train, and as there were only three passengers, the station-master declined to put on a "special." Here again was a similar condition incorporated by reference on the ticket, and again we find the judge, Mr. Justice Lopes, holding the condition reasonable and giving judgment for the defendants.

At first sight we admit this case appears more equitable than the other; the delay occurred owing to inclement weather, but the slightest inquiry dissipates this apparent justice. Here the same elements exist as in the other case. A company, well aware that weather is given to being inclement, that boats are thereby delayed, yet deliberately advertises what is practically a falsehood, that the boat and trains are in connection, knowing full well that if the boat is delayed, although the boat-train may wait, yet the margin of time allowed at the junction is so small that it cannot, in the event of the boat being much delayed, by any possibility catch the main-line train. By what reasoning in law or equity can a corporation be considered justified in so acting, and then sheltering itself behind a condition drawn to cover liability for the non-performance of the very act they stipulated to perform. Nay, is not their guilt, if we may use the term, increased by their refusal to send on a "special," the only effective reparation they can make? It will be noted that in the first case the Court excused the station-master for not sending on a "special," because, being a single line, it would have been dangerous; in the second case the refusal was based on the ground that there were only three passengers: does any one for a moment believe that either of these objections would have weighed with the company if the applicant for a "special" had been a crowned head, a premier, an actress or a professional beauty?

However, so stands the law at present; the condition that the company shall not be liable for delay is a reasonable condition and exonerates the company from liability; evidently the delay may be without limit of time. If a company, as in the first case, can escape all liability for unpunctuality amounting to 90 minutes, there evidently exists no reason why there should be any liability, should the Scotch express, say, advertised to do the journey in a certain number of hours, take, instead of hours, a like number of days. All the qualifications to this rule appear to be that the delay must not be caused by the negligence of their own servants, and, as shown by earlier cases, some notice must be given to the passenger calling his attention, either expressly or by reference, to the terms on which he is carried.

We have no hesitation in recording most emphatically our protest against these decisions. The law as laid down is essentially a law for the shareholders, not for the public; the company takes the benefit of the contract in the shape of fares, and are freed from a corresponding liability to the public. The decisions are eminently unsatisfactory, more especially that of the Divisional Court in *Woodgate* v. *G. W. R.*; and not the least unsatisfactory part of the proceedings was the scant courtesy the Bench thought fit to extend to the plaintiff, who earnestly desired leave to appeal, not in his own interests, but of the public at large. We are far from sharing Mr. Justice Hawkins' self-satisfied opinion, that an appeal would be useless, as the Superior Court would be certain to take the same view of the case. We fancy not; certainly in *Le Blanche* v. *L. & N. W. R.* that Court showed no such inclination, and moreover his Lordship should not forget that judgments of Divisional Courts have

not acquired a name for stability; we shall hope to see an appeal in Cooper's case, although, unfortunately, the facts of that case are not so clear and simple, and that decision could not settle the law so definitely as was possible in this case: we regard the decision as dubious, the refusal to allow an appeal as discourteous and unwarranted.

THE TORTIOUS OPERATION OF A FEOFFMENT.

A feoffment, or mode of conveyance of corporeal hereditaments in possession, in common use until the year 1845, operated to pass an estate either *by right* or *by wrong*. Thus, if A., tenant in fee simple, made a feoffment with livery of seisin to B. and his heirs, an estate in fee simple *by right* passed to B. But if A., tenant in tail, for life, or years, made a feoffment with livery of seisin to B. and his heirs, an estate in fee simple passed to B. *by wrong;* so that B. took the fee simple to the prejudice of the issue, of the remaindermen, or the reversioner.

In such a case had the issue, &c. any remedy? or, in other words, what was the exact effect of this tortious or wrongful alienation by particular tenants? This is what we propose to consider very shortly and simply in our article. Let us then suppose that in the year 1800 lands were conveyed by A. to B. and the heirs of his body. Under such a conveyance it is clear that two persons besides B. had an interest in the property, viz., the issue of B., who would take the property if B. did not bar the entail, which in those days he could only do by an expensive fine or recovery, and A., to whom the lands would revert when B.'s issue failed. Let us further suppose that B. by feoffment conveyed the lands to C. in fee simple, *i.e.*, for a larger estate than he had in the premises What was the exact effect of this conveyance?

C. became entitled for an estate in fee simple; but though he could enter on the lands and hold them during the life of the tenant in tail, his feoffor, who might have leased for his own life, yet he could not retain the lands after the feoffor's death; and if he did retain possession he was guilty of an injury called a *discontinuance*, the ancient legal estate, which ought to have survived to the issue of B., being by the wrongful feoffment suspended. Consequently, the heir of the body of B. could bring an action and eject C., though he could not enforce his right by mere entry on the lands until liberty was given him to thus redress and put an end to the discontinuance in 1833 by 3 & 4 Wm. 4, c. 27. If there was no issue of B., then C. could be ejected by A. or his representative.

It follows that while feoffment by a tenant in tail for any larger interest than his own life transferred temporarily that larger estate to the feoffee, yet in the end the feoffee derived no advantage, since he could be ejected by the persons entitled to the lands when his feoffor's interest determined.

In order that a feoffment in fee might operate as a *discontinuance* of the estate tail, it was necessary that the tenant in tail should be in possession. Further, owing to the provisions of 34 & 35 Hen. 8, c. 20, a feoffment by a tenant in tail of lands given him by the Crown did not operate as a *discontinuance* of the estate tail.

Thus the law continued until 1845, when, by 8 & 9 Vict. c. 106, s. 4, it was enacted that "a feoffment made after the 1st October, 1845, shall not have a tortious operation;" and, therefore, if at the present time a tenant in tail makes a feoffment in fee simple, the feoffee (unless the deed of feoffment is enrolled as required by 3 & 4 Will. 4, c. 74) merely takes an estate *pur autre vie*, his feoffor being the *cestui que vie*, and with the feoffor's death the feoffee's estate determines, and the issue or the reversioner are entitled to the land as if the feoffment had simply been for the feoffor's own life. In other words, such a feoffment would operate *innocently*, and confer on the feoffee that estate which the feoffor could lawfully convey to him.

Turning now to the case of a tenant for life or years making a tortious feoffment: to simplify matters let us suppose that in 1800 lands were conveyed by A. to B. for life, with remainder to C. in fee, and that B. by feoffment conveyed the fee simple to D. What was the exact effect of such a conveyance? Like the feoffment by the tenant in tail, it in the first place operated *by wrong*, and conveyed the fee simple to D., although the feoffor was but a tenant for life. But here the resemblance stopped, for it caused no *discontinuance*, but a *forfeiture* of the particular estate; or, to put the matter more exactly, D. took the fee simple, and C.'s remainder was divested and displaced, and he no longer retained any *estate*. He had, however, the immediate *right of entry* on the land, just as if B. were dead, and consequently the tortious feoffment in this case operated as a *forfeiture* of the particular estate, and accelerated the remainder, and the feoffee was the person injured. Until, however, entry was made upon him by the remainderman,

he remained tenant in fee simple by force of the feoffment. The following reasons for this forfeiture are assigned:—(1) B., by granting a larger estate than his own, had by his own act determined and put an entire end to his own original interest, and on such determination, the next taker was entitled to enter regularly, as in his remainder or reversion. (2) B.'s wrongful alienation amounted to a renunciation of the feudal connection and dependence; it tended in its consequence to defeat and divest the remainder or reversion expectant, and it was but just, that as the remainder, &c. was put in jeopardy by B.'s act, that upon discovery the particular estate should be forfeited and taken from him who had shown so manifest an intention to make an improper use of it. (3) B.'s act was incompatible with the estate which he held, and was a breach of the implied condition which the law annexes to a particular estate, viz., that the tenant shall not attempt to create a larger estate than he himself is entitled to.

It must here be observed, that the forfeiture arising from a wrongful feoffment did not affect estates lawfully created prior to the feoffment, that is, if in the case supposed, before enfeoffing D. in fee, B. had, under a power conferred on him by the settlement by which his life estate was created, made a lease of the lands to E. for ten years, C., the remainderman, could not eject E. until the expiration of the ten years; for the law would not hurt an innocent lessee, nor allow the lessor, after creating a lawful estate, by any wrongful conveyance to avoid it.

And thus the law remained till the year 1845, when by 8 & 9 Vict. c. 106, it was enacted as above, that feoffments should not have a tortious operation; and, therefore, if at the present time a tenant for life or years conveys by feoffment an estate in fee simple, the feoffee merely takes the estate of his feoffor, and not the fee simple, and no forfeiture to the remainder or reversioner arises.

The above outline will, we hope, give our readers, especially such of them as have not yet passed the Law Society Examinations, a good general idea of the tortious operation of a feoffment. Those desirous of further details, must refer to Coke's Institutes and Vol. I. of Stephen's Commentaries, from which the above remarks have been compiled.

NOTES ON THE FINAL.

The Honors List for November shows the names of 17 successful candidates, of these 2 were placed in the first class, 6 in the second class, and the rest in the third class.

Bearing in mind the difficult character of the Examination, the fact that as many as 17 were able to attain to the high standard required even for Third Class Honors, speaks much for the diligence with which students now work for the Law Society Examinations.

And the value of the First Prize is now, even from a mere pecuniary point of view, well worth working for. It consists of the Clement's Inn Prize, value 10 guineas, and the Daniel Reardon Prize, about 25 guineas. And further, the First Prizeman has the chance of obtaining the Scott Scholarship and the Brodrip Gold Medal.

It is within our memory that the First Prizeman only got, as a certainty, 5 guineas, instead of as now, 35 guineas.

The Second Prizeman, however, still comes off very badly, he merely gets 5 guineas. Now that the Law Society Prizes are given so sparingly, we feel that some of the Society Funds might well be used in increasing the Second Prize to 20 guineas, and we commend the matter to the consideration of the Society, and the improvement might be allowed to come into operation for the 1885 Examinations.

Once more we insist that the Second Class Prizemen should be placed in order of merit. We do not know how far short the first man's marks in the Second Class fell short of the Second Prizeman's at the recent Examination—they may have been a long way behind or quite close behind—but one thing we are assured of, that the third man at such an Examination ought to know his place; as matters stand, he does not know if he was third or eighth, and looking to the work which has to be done, and the diligence bestowed to obtain a place in the Second Class, no one will dispute the fact that the Second Class men ought to be placed in order of merit. This improvement might also be allowed to come into force for the Examinations of 1885.

The Hertfordshire Law Society Prize has not gone long begging. Mr. Callaway, the First Prizeman in November, having been articled with Messrs. Sworder and Longman of Hertford. We can only regret that the prize is not more valuable. Looking to the few men who are now allowed a place in the First Class, the Hertfordshire Prize of 5 guineas might well be

increased to 20 guineas, without any danger of the funds of the Society being seriously encroached upon.

The days fixed for the next Final (Pass) are Tuesday and Wednesday the 13th and 14th instant, and for the Honors Examination, Friday the 16th instant.

For the way in which the subjects are dealt with at the Examinations we must refer our readers to the remarks made in our June Number, 1884.

Those candidates who are about to present themselves for Examination will do well to pay attention to recent statute law, recent rules of Court, and recent cases of importance and those who have the back Numbers of the Law Notes could hardly do better than get up this recent law from them; and if they have also the Supplements to the Law Notes, with a view to observing how questions should be answered at the Examination, they will do well to go through the questions and answers given in the Supplements.

Our Supplements Nos. 1, 2 and 3 will be published as follows: No. 1, containing the Answers to the Final (Pass) Examination Questions, on Thursday morning, January 15th; No. 2, containing the Answers to the Intermediate Examination Questions, on Friday morning, January 16th; and No. 3, containing the Answers to the Honors Questions, on Wednesday morning, January 21st. All three Supplements will be sent off to our subscribers by the post of Wednesday, January 21st.

The result of the Final (Pass) and Intermediate Examinations will be made known on Friday, January 29th, and the list of successful Candidates will appear in the "Times" of Saturday, January 30th, and will be given by us in our February Number.

The following is extracted from the Honors List:

NOVEMBER HONORS EXAMINATION.

First Class.
(In order of Merit.)

1. Callaway, John (Hertford). *Clement's Inn and Daniel Reardon Prizeman;* value in all, about 35 guineas.
2. Meager, David Villiers (Swansea). *Clifford's Inn Prizeman;* value, *5l. 5s.*

Second Class.

Hutchings, Thomas William Bishops (Newton Abbot).
Scale, George (Manchester).
Scorer, Albert Edward (Lincoln).
Stigant, Frederick Adam (Rochester).
Sutherland, James Mead (London).
Wilkinson, Thomas Lewis (Liverpool).

These candidates were placed in alphabetical order, and each received a second class certificate.

Third Class.

Adler, Elkan Nathan, M.A. (London).
Ainger, William Dawson (Torquay).
Chorley, Richard Fisher (Kendal).
Fraser, Claude (London).
Maunder, Edward Guy (London).
Parker, George Phillips (London).
Turnbull, Alexander Mark (Newcastle-on-Tyne).
Ward, Septimus Gladstone (Newcastle-on-Tyne).
White, Ernest (Durham).

These candidates were placed in alphabetical order, and each received a third class certificate.

NOTES ON THE INTERMEDIATE.

The next Examination is fixed for Thursday the 15th instant.

Those of our readers who are about to present themselves for this Examination will now be carefully revising their work. If they have the back Numbers of the Intermediate Supplements (Law Notes), they would do well to read the questions and answers which have been set on Stephen since that book was selected for the Examination; not with a view to anticipating the questions, but to seeing how questions should be answered at the Examination.

We would specially warn candidates not to be misled by the word "concise" in the instructions which will be handed to them. The word does not signify that the examinee is to be at liberty to give a very short answer to a question which requires details, but merely that he is not in answering to wander outside the subject of the question.

The article on "Tortious Operation of a Feoffment" should be specially useful to those of our readers who have not yet passed the Intermediate.

The useful "Mems." on Stephen are continued below.

"MEMS. ON STEPHEN."

(*Continued.*)

Powers of a Mortgagee.

1. To enter and take possession of the mortgaged property.
2. To sell under his power of sale, or under the power conferred by the Conveyancing Act, 1881.

3. To foreclose the equity of redemption, and so make himself absolute owner both at law and in equity.

4. To sue on his covenant or bond.

5. Under the Conveyancing Act, 1881, to appoint a receiver, to insure the premises, if in possession to cut and sell the timber, and to lease the premises.

Rights of a Mortgagor.

1. To compel the mortgagee to allow him to redeem the estate on payment of principal, interest and costs.

2. To remain in possession until ejected by the mortgagee, and to deal with the property as if still the owner thereof, including the right to make a lease under sect. 18 of the Conveyancing Act, 1881.

3. To bring an action for trespass or damage to the property, and to recover the property itself at any time before the mortgagee takes possession, or gives notice of his intention to take the rents and profits. This is by sect. 25 of the Judicature Act, 1873.

Estates, as to the Time of their Enjoyment.

1. Estates in possession.
2. Estates in expectancy.

Various kinds of Estates in Expectancy.

1. Estates in reversion.
2. Estates in remainder.

Different kinds of Remainders.

1. *Executed* or *vested* remainders.
2. *Executory* or *contingent* remainders.

Examples of Remainders and Reversions.

1. A., tenant in fee simple, grants lands to B. for life. The interest remaining in A. is called his reversion.

2. A., tenant in fee simple, grants lands to B. for life with remainder to C. This is a *vested* or *executed* remainder.

3. A., tenant in fee simple, grants lands to B. for life with remainder to B.'s son unborn. This is a *contingent* or *executory* remainder.

Differences between Remainders and Reversions.

(1) A remainder arises by act of the parties, a reversion by operation of law; (2) Between a particular tenant and the reversioner tenure exists; but between the remainderman and the particular tenant there is no tenure.

Rules for creating Remainders.

1. There must be some particular estate precedent to the estate in remainder.

2. The remainder must commence or pass out of the grantor at the time of the creation of the particular estate.

3. The remainder must be limited to take effect in possession immediately upon the determination of the particular estate, and neither later nor earlier.

Additional Rules applicable only to Contingent Remainders.

1. If they amount to a freehold, they cannot be limited on an estate for years or any other particular estate less than a freehold.

2. Every contingent remainder must (subject to 8 & 9 Vict. c. 106, and 40 & 41 Vict. c. 33) become vested either during the continuance of the particular estate or *eo instanti* that it determines.

NOTES ON THE PRELIMINARY.

The next Examination is fixed for Wednesday and Thursday, 11th and 12th February, and the subjects on which Candidates will be examined are:—

1. Writing from dictation.
2. Writing a short English composition.
3. Arithmetic—the first four rules, simple and compound; the rule of three; and decimal and vulgar fractions.
4. Geography of Europe, and History of England.
5. Latin—Elementary.
6. (1) Latin. (2) Greek, Ancient. (3) French (4) German. (5) Spanish. (6) Italian.

The following are the books in which Candidates will be examined in the subjects numbered 6 at the above-mentioned Examination.

In Latin:—Sallust, Jugurtha; *or*, Virgil, Æneid, Book II.

In Greek:—Sophocles, Œdipus Tyrannus.

In French:—Chateaubriand, Voyage en Amérique, from pp. 267—342; *or*, Voltaire, La Mort de César.

In German:—Goethe, Egmont; *or*, Schiller Turandot.

In Spanish:—Cervantes, Don Quixote, cap. xxxi. to lii. both inclusive; *or*, Moratin, La Mojigata.

In Italian:—Beccaria, Trattato dei Delitti e delle Pene; *or*, Dante's Inferno, Cantos 1—10, and Gallenga's English and Italian Grammar.

With reference to the subjects numbered 6, each Candidate will be examined in *two languages according to his selection*. Candidates will have the choice of *either* of the above-mentioned works in the two selected languages.

With regard to the October Examination, we are astonished to find the following remarks respecting it made by the editor of Gibson's Preliminary Guide (No. 28):—"We beg to remark that we think it a

pity the Examiners should repeat almost word for word questions given in former Examinations, which will be found in back Numbers of our Guides."

If it is true that such a course is adopted, it is no wonder that so many Candidates pass muster at the Preliminary who have little or no chance of satisfying the Examiners at the Further Examinations.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Answers to Correspondents.

G. T. Cook.—The subjects for 1886 will not be announced till July. A new edition (9th) of Stephen was published not very long ago.

Justinian.—We do not think such an inference could be drawn. You would probably fail to recover more than 2*l.*

A. E. B. Soulby.—Leading counsel advise that a trustee cannot be compelled to give the undertaking. There is no decided case upon the point; but see Law Notes, Vol. III., pp. 37, 127.

Hamlet.—The book you refer to is not sufficiently recent. It does not incorporate the recent Acts of Parliament.

J. H. B.—Possibly in November, 1886, but you may have to wait until January, 1887. This you cannot know definitely till the notices for 1886 are issued by the Law Society. This will be in July next.

R. W. Andrews.—Because, by the Act of 1882, a married woman has power to devise her lands by will, and if she does so the husband's curtesy will not attach.

Bronlace.—The list you give is a very good one, and if you add to it Haynes' Student's Cases and Ringwood's Bankruptcy it will be sufficient for your purpose.

John F. Edell.—We gave a list in February, 1882. Thanks for your suggestion. It shall receive our consideration.

Enquirer.—Yes, the testator's next of kin, who would be ascertained at the testator's death. (See Hayes & Jarman, and Jarman on Wills.)

R. H. Goultry.—All the editions you name are far too old. There are fresh recent editions of each book which you should procure.

Bodmin.—(1) Shirley's Common Law Cases; (2) Stephen's Digest of Criminal Law; (3) Ringwood.

Lex.—(1) He is not personally liable, but any property he obtains beyond what is absolutely necessary for his ordinary expenses passes to the trustee, and if he obtains credit to the extent of 20*l.* without disclosing the fact that he is an undischarged bankrupt he is guilty of a misdemeanor. (2) He is liable for publishing, and his only course is to apologize, and, if sued, to plead the apology under 6 & 7 Vict. c. 96. By so doing he would mitigate the damages.

H. H. P. George.—It has been decided that perambulators are not allowed on a footpath. But the case is not, we believe, reported.

D. O. B.—(1) The Act itself and the Rules and Ringwood's Bankruptcy. (2) This will suffice.

Percy Jones.—B. would have no remedy; such a bye-law would hardly be held valid.

Subscriber.—You must get the new edition of Stephen. No other book is necessary, though the Guide to Stephen would no doubt make your labours much lighter. (1) Aids to Equity, 2nd ed., would bring your books up to date. (2) It would be better. Stoney & Andrews is an inexpensive and useful work. (3) Williams' Personalty and Elphinstone's Introduction to Conveyancing.

Ship Canal.—If A. sells mustard, and uses in respect of it a particular *mark*, this is a trade mark; but if he sells it under a particular name, as "Colman's Mustard," he then sells it under a trade *name*. A trade mark must be registered, not so a trade name.

Dent.—(1) These will do. (2) Yes. (3) Dixon's Probate, 2nd ed., just out. (4) They would be fully revised again during the last four months, and then should be sufficient. (5) What is recommended in the "Aids" will suffice. (6) Many thanks for your kind letter and wishes. You will observe that there is not much difference.

C. S. Bradley.—It simply means that if A. has stolen B.'s goods, and B. buys them from A. in open market, he need not pay the price; but if A. had sold to C., and C. sold to B., then B. must pay the price agreed upon.

W. W. W.—You can go up for your Final in June, 1886, but you cannot be admitted until the 14th September. The receipt accompanies this Number.

H. P. C.—Thanks; we will set out your letter, and comment upon it, in the next issue.

[Want of space prevents our answering several other letters received.]

Correspondents' Answers.

To the Editor of Gibson's "Law Notes."

Sale of Land.

Dear Sir,—In answer to "E. Gordon Callender's" query, I beg to submit that no action can be main-

tained by either party; for, although initials constitute a sufficient signature to satisfy the requirements of the Statute of Frauds, and it is quite immaterial upon what part of the paper the signature or initials are found, the signature must be made with a view of authenticating the document as a concluded contract, and not with a view merely of altering or settling a draft. (See *Coldham* v. *Showler*, 3 C. B. 320; *Hawkins* v. *Holmes*, 1 P. Wms. 770; *Doe* v. *Pedgriph*, 4 C. & P. 312.)

Again, no doubt the draft concludes with the words "As witness our hands," or words to the like effect. In *Hubert* v. *Treherne* (3 M. & Gr. 743; 4 Sc., N. R. 486), it was held that if an agreement concludes "As witness our hands," or contains any words showing that the names of the contracting parties were to be subscribed, there is no signing within the statute, unless the names of the parties are duly subscribed at the foot of the instrument.

F. W. MARTIN.

Answer also received from G. J. B. P.

To the Editor of Gibson's "Law Notes."

LANDLORD AND TENANT.

Sir,—Would not the information given by B. to A. amount to a communication to A. of a refusal on the part of B. to perform the contract. That being so, it would appear that, from the cases cited below, A. is at once able to sue B. for the next half-year's rent. (See *Pagani* v. *Gandolphi*, 2 C. & P. 370; and cited in *Fisher's Digest*, col. 5744; *Hochster* v. *De la Tour*, 22 L. J., Q. B. 455; 17 Jur. 972; *Frost* v. *Knight*, L. R., 7 Ex. 111.) E. E. P.

Similar answer from E. GORDON CALLENDER.

Answer also received from JAS. F. ELGAR.

REVIEWS.

Fisher's Digest of Reported Decisions from 1756 *to* 1883, *inclusive.* By JOHN MEWS; assisted by C. M. CHAPMAN, HARRY H. W. SPARHAM, and A. H. TODD, Esquires, Barristers-at-Law.—As stated in the preface, this work is a consolidation of the old Fisher's Digest and the supplemental Digests issued since the publication of the original work. In the present work matters exclusively belonging to the Chancery Division are totally excluded. The Digest is essentially a common law Digest. We question whether a young practitioner whose library is very much in embryo could do better than place these seven volumes on his shelf; in common law at least he will be armed for all emergencies, and will be to all intents and purposes provided with a set of law reports dating back to 1756, and infinitely more convenient for reference purposes. Some seven hundred odd columns are taken up with Bankruptcy decisions, of course under the old Act, but let not readers imagine that these decisions are useless; they will, in so far as applicable to the unaltered statutory law, still apply, and in such a work they are very properly found. These remarks apply equally to the cases on bills of exchange, for although the last Act has codified the law, the old cases are still useful in a digest, to show the leanings of the Court and guide practitioners in the interpretation of the present code.

Under the heading Husband and Wife we find, of course, many decisions on old points now set at rest for ever by the Married Women's Property Act, but this statute appears, and the decisions on it are incorporated well up to the date of publication of the work.

There is much we could find to praise in this Digest; the headings and sub-divisions specially call for notice; but a work of such standing and position is too well known to need praise. Every lawyer should possess it, especially, as we have already said, young practitioners starting a library; their client-waiting time can then be most usefully employed in noting up all the important decisions of the past year, for cases to the end of 1883 only are incorporated. In a publication of seven volumes it is not possible to bring it closer down to date; in fact, great praise is due that it covers that year. It is published by H. SWEET, 3, Chancery Lane; STEVENS & SONS, 119, Chancery Lane; and Messrs. MAXWELL & SON, 8, Bell Yard.

The Law of Evidence. By His Honour Judge PITT-TAYLOR, 8th edition.—A new edition of this, the leading work on evidence, is indeed acceptable. The practitioner proudly places it on his shelf and feels that now, in truth, he has a guide and counsellor in every difficulty that can by any possibility arise in connection with that most difficult of subjects, the law of evidence. The treatise has long since taken first rank, and mere remarks, either laudatory or condemnatory, at the hands of any reviewer, can have now little influence either for good or evil; the legal public has long since decided in its own mind that "Pitt-Taylor's Evidence" is, if not infallible, nearly so; there remains, therefore, little else to do but to test, as the author happily phrases it, the "booking up" of recent decisions, and we must confess that in this respect there is little room for complaint. The decision in *Reg.* v. *Brittleton*, and the Married Women's Property Act, 1884, are both inserted in the body, and this is so with many other cases we have tested. We have, however, one complaint to make in this respect; the length of the "Addenda and Errata" is much to be deprecated. We well realize the labour of a work of this magnitude, the time alone that a work of two heavy volumes takes to go through the press; therefore, no reasonable

criticism could be made that the important decisions, *Haines* v. *Guthrie* on hearsay evidence in pedigree cases, and *Barnes* v. *Toye* as to infant's necessaries, cases only quite recently reported, should be found in this column, but bearing in mind that *Reg.* v. *Brittleton*, decided in March last, is in the body of the work, we think that *Reg.* v. *Mallory*, an important case on admissions as evidence in criminal prosecutions, decided in May, might have found its way into the text. But even this adverse remark, now it is written, appears hypercritical. It is in the Addenda column with many other important cases, and all practitioners have to do is, to hand the book over to a clerk with instructions then and there to note up the "Addenda" in the margin on the proper page. This done, the book will be cased up to date, and they will possess a work on evidence unrivalled for accuracy and correctness.

We have searched, but searched in vain, for some exposition of the difficult rules in connection with statements made by prisoners, and the rights of counsel to reply. On this point we do not find any remarks. Possibly the author does not consider that it falls within the scope of the book: to our minds it appears to be a question of great importance in connection with criminal evidence, and we shall hope to see some remarks on this subject in the next edition.

To fully realize the magnitude of the task undertaken by the learned author, it is well to be reminded that the law of evidence has been compiled from a lengthy list of statutes of various descriptions; from cases scattered through "Digests," and under various heads; from rules of Courts and decisions on such rules; in short, as the author says in his preface, from such "an embranglement" that "he marvels at his own intrepidity." He well deserves the thanks of all lawyers who must have been, but for his guidance, overwhelmed by this "embranglement." In conclusion, we can only say, that in our opinion the work is excellently well done; we know, in short, no book to rival it; no lawyer who prides himself on the completeness of his library can dispense with this new edition. It is published by Messrs. Maxwell & Son, Bell Yard.

The Annual Practice, 1884-85. By Thomas Snow, M.A., Hubert Winstanley and Joseph Walton, Esquires, Barristers-at-Law.—The very nature of the subject with which this work deals necessitates for accuracy constant new editions. The ever-varying points that arise on the rules are receiving each week judicial interpretations, and a book on practice to be worthy to be classed as excellent must be accurate, and to be accurate it must be recent. Both authors and publishers of the work now before us are to be congratulated on the realization of this fact, and the enterprise and determination they have shown in meeting the want. It is no little task, nor slight risk, to *annually* bring out such a book as this; irrespective of such considerations as an edition not being exhausted, &c.; a fact the public will do well to bear in mind if any should be found to object to the very slight increase in price compared with the increase in pages.

We noticed the first edition of this book so favourably that it requires nothing more of praise at our hands. All that is necessary is to draw attention to the few, very few, cases which appear to have escaped the authors. For instance, as to service of a writ of summons, surely the decision in *Jenning* v. *Owen* (Law Notes, Vol. III. p. 51) should have been found in the excellent notes to this rule; another case, *Hart* v. *Brown* (Law Notes, Vol. III. p. 201), allowing a slight extension of third party procedure; the decision in *O'Meara* v. *Stone* (Law Notes, Vol. III. p. 107), illustrating a case in which the Courts will not allow interrogatories, are wanting. There are some excellent notes as to examination of witnesses abroad, but we cannot find *Lawson* v. *Vacuum Brake Co.* (Law Notes, Vol. III. p. 233); certainly this decision should not have been omitted. On Ord. LXV. r. 27, the learned authors make no observations, and yet there has been a decision on this rule, the case of *Piazzo* v. *Maryport Harbour* (Law Notes, Vol. III. p. 135). But enough, the work is excellent, and deserves naught but praise. One defect, and that is partially remedied, is that the Rules of Court, Oct. 1884, appear in an "Addenda"; but this is not the fault of the authors; the "Addenda" can be and should be at once incorporated in the text. In conclusion, we can only repeat that the work is one of great excellence, and bids fair to take position as a leading book on the subject. It is published by Messrs. Maxwell & Son, Bell Yard; and Henry Sweet, Chancery Lane.

Questions on Equity.—When reviewing Snell's Equity in our last Number we omitted to mention that we had received a book of useful questions on the book, prepared by W. T. Waite, Esq., and published by Messrs. Stevens & Haynes, Bell Yard, Chancery Lane.

Greenwood's Real Property Statutes. 2nd edit. By Harry Greenwood, Esq., M.A., LL.M., of Lincoln's Inn, Barrister-at-Law, assisted by Lees Knowles, Esq., M.A., LL.M.—The second edition of this most useful work will be welcomed by the profession. For the benefit of those of our readers who are not acquainted with this book we may mention that the first 100 pages are devoted to a consideration of the Statutes of Limitation affecting real estate. Then follow the statutes relating to illusory appointments. Next we have a detailed consideration of the Partition Acts. The statutes relating to the exoneration of charges are next dealt with by the author. Then

comes the Real Property Amendment Act, 1845, as amended by the Contingent Remainders Act, 1877. About 30 pages are devoted to a learned discussion of the effect of Lord St. Leonards' Act and Amendment, and some 20 pages to the Vendor and Purchaser Act, 1874. 150 pages are devoted to the Conveyancing Acts, 1881 and 1882. This is followed by a lengthy discussion of the Married Women's Property Acts, and the Settled Estates Act and Settled Land Acts; and the book concludes with the Improvement of Land Act and the Limited Owners' Residences Acts. An immense amount of labour appears to have been bestowed on the preparation of the notes to each section of each Act, and it can hardly fail to find appreciation at the hands of the profession. On one point we have looked in vain for elucidation, viz., whether a married woman can now be considered for the purposes of suing under the Statutes of Limitation as being under disability? Our own opinion is strong, that since she can sue as a *feme sole* under the M. W. P. Act, she will have to bring her action within the same time as if she were really unmarried, but we have been disappointed not to find any opinion expressed by the learned authors of the work before us on this subject. But with this exception we have found all the points—and they are by no means few—in which, in our opinion, students and others have a difficulty explained in the excellent notes of the book before us, and this remark particularly applies to the Statutes of Limitation affecting real property, some of the provisions of which are extremely difficult of construction, *e.g.*, section 10 of the R. P. L. Act, 1874, as read with sect. 25, sub-sect. 2 of the Judicature Act, 1873. The work is published by Messrs. Stevens & Sons, Chancery Lane, W.C.

The Principles and Practice of Discovery. By Edward Bray, Barrister-at-Law, 1885.—A work like this serves to remind one what a vast and intricate subject the law is. That a subject so special, and of apparently so limited a nature, as the Law of Discovery, should afford sufficient material for a book of some 700 pages, is no less a witness to this fact than to the thoroughness with which Mr. Bray has treated it. We confess that we have not read the book through: and, indeed, we would submit that it is one for reference rather than perusal: but we have dipped into it in search of enlightenment on several points in connection with the Law of Discovery, and have, in every case, found the point elaborately, but clearly, discussed, with the most voluminous detail and reference to decided cases. Information is given with respect to almost every conceivable point on the special branch of law treated of. We may casually remark that Mr. Bray's view, that the Divorce Division has full power to order discovery in suits for nullity, has been supported in the case of *Harvey* v. *Lovekin*, decided last month. The arrangement of the subject adopted is admirable, and especially the device of printing the Case Law in smaller type than that used for the general text. Reeves & Turner, 100 Chancery Lane, London. Price 12*s.* 6*d.*

The Law of Probate. By W. J. Dixon, B.A., LL.M. Second edition, 1885.—We are glad to see that Mr. Dixon has not only reduced the second edition of this work in bulk, but has revised and re-arranged the whole. The first edition, which we had the advantage of perusing when it appeared in 1880, we found to contain a great mass of valuable information; but it struck us that though great diligence had been exercised in gathering it, it lacked method in arrangement; and our impressions after perusing it were ones not unmingled with confusion, though we must confess to having derived a great benefit therefrom. The new edition is now in a much more readable form, and has not that appearance of hasty construction which the first edition bore. We miss, however, two or three important recent cases, which surely should find a place in a volume of so extensive a scope as the present. For instance, under the head of "The Law regarding Attesting Legatees," we find no reference to the case of *Thorpe* v. *Bestwick* (6 Q. B. D. 311), or *Re Fleetwood* (15 Ch. D. 594). And what surprises us more is that we find no allusion made to the 125th section of the Bankruptcy Act, 1883, and the administration in bankruptcy of the estates of persons dying insolvent under that section. Again, in a work on probate dated 1885, we should expect to find some reference made to the Intestates' Estates Act, 1884. With these exceptions, we have no fault to find with the work or its execution, and for practical purposes it will be of the utmost value. It is published by Reeves & Turner, 100, Chancery Lane, W.C.

We have received several other works for review, but want of space compels us to defer our notices: *inter alia*, we must acknowledge Pamphlet by J. J. Coulton, Esq.; a new edition of Story's Equity (Stevens & Haynes); a History of the Law Reports (Clowes & Sons); Broom's Commentaries of the Laws of England (Maxwell & Son); Harrison's Epitome of Criminal Law (Reeves & Turner).

LAW STUDENTS' DEBATING SOCIETIES.

The Annual General Meeting of the Preston Law Students' Society.

The annual general meeting of this Society was held at the Preston Law Library on Friday, Nov. 28th, 1884, at 7.30 p.m., when the chair was taken

by the president, T. M. Shuttleworth, Esq., solicitor. The honorary secretary (Mr. Albert Bush) presented and read the report of the committee for the past session, of which the following is an epitome:—The roll of members contained the names of 56 gentlemen, of whom 31 were honorary, consisting of 7 barristers-at-law and 24 solicitors, and 25 were ordinary members, the latter consisting of 24 articled clerks and one bar student. At the termination of the last session there were 39 members, consisting of 20 honorary and 19 ordinary members—that showed an increase of 17 members. Including the last annual general meeting 27 general and special meetings had been held during the session as against 22 of the previous session, the average attendance at which had been 17, the largest on the records of the Society. The average attendance of the previous two sessions was 13. At six of the meetings the chair was taken by barristers-at-law, twelve had been presided over by solicitors, and the remaining nine by ordinary members. Seventeen legal subjects had been debated, the same as during the previous session, and six general subjects as against two of the previous session. Ninety-seven legal moots had been discussed, of which 38 had been propounded by committee-men and 59 by non-committee-men. The committee were pleased to find that the system of legal queries which was in vogue in the old "Leguleian" times had latterly been adopted by many kindred societies, and they had grounds for believing it was of as much service and profit in other towns as it had always been in Preston. The following members of the Society had been successful at the Incorporated Law Society's Examinations during the year, viz.—Intermediate, Messrs. Beaves, Brierley, A. T. Plant, and Kent. Final, Messrs. J. J. Dallas and J. Tomlinson, both of which gentlemen took honors. The committee desired to express their sincere thanks on behalf of the Society to the president and those gentlemen who had during the past session assisted the Society by taking the chair and otherwise placing their services at its disposal. The committee wished again to acknowledge the continued kindness of the Preston Law Society in allowing the members the free use of their room.

The adoption of the Report was then moved by the President, and carried *nem. con.*

Mr. A. Cotman, the Honorary Treasurer, then presented his audited balance-sheet, which was also adopted.

The following officers were then appointed:—President, T. M. Shuttleworth, Esq., solicitor; Honorary Secretaries, Messrs. Albert Bush and J. J. Rawsthorn; Honorary Treasurer, Mr. William Bramwell. Committee: Messrs. A. Cotman, S. Davies, W. Gillow, A. T. Plant, and the Honorary Secretaries and Treasurer.

After some other business had been disposed of the President proceeded to deliver an address on the duties of articled clerks and young solicitors, which was highly appreciated by the members, who tendered Mr. Shuttleworth their warmest thanks. It was resolved that the address should be printed and circulated among the members of the Society.

The best thanks of the meeting were then given to the gentlemen who had acted as officers of the Society during the last year, to whose exertions was to be attributed in a large measure the progress which the Society had made. The proceedings then terminated.

North Staffordshire Law Students' Society.

The third Ordinary Meeting of the Session 1884-85, was held on Wednesday, the 10th December, at the Masonic Hall, Hanley, when the chair was taken by H. W. Stanbury, Esq., solicitor. The subject for debate was, "Is the decision of the Court of Appeal in the case of *Mander* v. *Harris* (27 Ch. D. 166), correct?" Mr. A. H. Shaw opened in the affirmative, and was supported by Mr. A. Boulton. The speakers in the negative were Mr. R. W. Day and Mr. F. W. Wain. After a careful summing-up by the chairman, the question was put to the meeting and was carried in the affirmative by a majority of 4. A vote of thanks to the chairman concluded the meeting.

Birmingham Law Students' Society.

A meeting was held in the Law Library, Bennett's Hill, on Tuesday evening, the 25th ult., Mr. R. A. Dale in the chair. A debate took place upon the following moot point: "Was the case of *Labouchere* v. *Dawson* (L. R., 13 Eq. 322), rightly decided?" The speakers in the affirmative were Messrs. Arthur Smith, H. M. Robinson and Restall; and in the negative Messrs. S. M. Slater, C. Cattell and Graham Milward. The speakers on either side having replied, the chairman summed up, and on a vote being taken, the affirmative was carried. A vote of thanks to the chairman concluded the meeting.

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Edited by ALBERT GIBSON.

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NOTICE.

Arrangements have been made to supply all the Numbers of the "Law Notes" for 1885, *and Supplements* **gratis**, *to any intending Subscriber remitting his Subscription of* 6*s.* 6*d.* **directly** *to the office of the "Law Notes" any time during the year; provided all back Numbers are in print at the time of application. If any of the Supplements are out of print, then the "Law Notes," and such Numbers of the Supplements only as are in print, can be supplied for* 6*s.* 6*d. A sufficiently large issue has, of course, been ordered to supply all who have* **already** *Subscribed or renewed their Subscriptions with all Supplements.*

The "Notice to Subscribers," issued on pink paper with the December Number, has evidently not been read by some Subscribers. We have, therefore, to again announce that in future Subscribers will receive **all three** (*Final, Intermediate and Honors*) *Supplements together early in the week following each Examination; for the reasons for this alteration we must refer to the Notice. The Final and Intermediate Supplements are* **on sale** *at the Publishers,* Messrs. Reeves & Turner, 100, *Chancery Lane, on the mornings after the Examinations as hitherto.*

SOME NOTES.

TWO flagrant cases of pretending to be a solicitor have recently occurred. The first at Lancaster: an auctioneer writing letters demanding payment of a debt and 5*s.* 1*d.* costs of the letter; as the Lancaster Law Society did not desire to press the matter, the bench only inflicted a fine of 1*l.* and costs. But why did the Society not press the matter? We have read the proceedings; we fail to see any reason for leniency, and the magnanimity of the Society was not called for, and will be wasted. The other case, at Halifax, was taken up by the Incorporated Law Society; and in this instance the full penalty and costs was enforced, or, in default, two months' imprisonment; the offence in this case was similar—writing letters demanding payment of money. Why the difference in punishment? Surely not because, in the first case, the offender was an auctioneer, and in the second a publican who had been a solicitor's clerk. If so, the penalties should have been reversed. Auctioneers are greater offenders against the Act than publicans.

So the "Globe" wants workmen's clubs stopped now. "Tippling clubs" our contemporary calls them. For a small subscription of a shilling a-year, these places turn themselves into clubs, where *nominal* members, as the "Globe" dubs them, can obtain liquid refreshment at any time, and on any day, including Sundays. We regret equally with our contemporary this truly terrible state of things; it is one more proof of the difficulty that exists in endeavouring to make men sober by statute. We have one question to ask however, Wherein lies the *legal* distinction between these clubs and the West-end clubs? in the difference in the subscriptions?—surely not. Logically, therefore, our contemporary, when proposing action against these clubs, will support action against all other clubs, otherwise it must submit to the charge it so frequently brings against its opponents, of "stirring up class against class," for if no legal distinction exists, it will be a hard task to make the workman recognize the "*social*" one.

We think it well to draw attention to some troubles of a correspondent as a timely warning to others. In an administration action he had sent out notices to creditors to prove their claims, and had adopted a form given in a leading book on Chancery practice, in which it is suggested that the "short title" of the action be given, and the date of the administration order is omitted. Now the creditors' solicitors do nothing but write for the full title of the action and the date of the order. We leave energetic Chancery practitioners to find out both book and form; we have given a hint, it is for them to profit by it.

Are we all getting better or more wicked? One day you read of the various attempts to "tipple" and evade the "Sobriety Statutes," another day of sham companies, conspiracies to blow up everything and everybody. All these enlivening scraps of news the papers put in large type; but evidence of the diminution of crime throughout the kingdom is always placed in a small corner paragraph. In Wales, for instance, Mr. Justice Stephen has scarcely anything to do but receive white kid gloves—we trust the clerk of the court gets the right size, and the proper number of buttons; usually six-and-a-quarter and ten buttons; oh! we forgot these are for a judge. Lord Chief Justice Coleridge, again, on his circuit is perfectly amazed at the decrease in crime. His Lordship does not know whether to attribute it to want of funds, education or temperance. Cynics will say that want of funds means want of liquor, and want of liquor less crime: others will say education means sobriety, and that the funds now go into other funds, through the medium of the Post Office Savings Bank; certainly these savings increase, and public-house property is not worth what it was.

We received the following from a correspondent one foggy morning; we were just asking ourselves whether editorial life was worth living; the answer entirely depends whether our correspondent intends sending any more. "A coal dealer asked some law students what legal authority was the favourite of his trade. One answered 'Coke.' 'Right,' said the coal dealer. Another suggested 'Black-stone,' 'Good, too,' said the questioner. Then a little man piped out 'Little-ton.' Whereupon the coal dealer sat down."

There can be very little question what the answer of the Kentish farmers will be when, if ever, the question of the Disestablishment of the Church comes on. The Ecclesiastical Commissioners are still levying distresses for extraordinary tithes in Kent: the auctioneer specially imported from London should have been well paid, he seems to have had a bad time of it in the snow-ball line. Of course as long as extraordinary tithes are *legal*, they should be paid, but the sooner the law is amended the better we should say for all parties, more especially the authorities; the men of Kent are a doughty lot and not to be lightly roused.

Mr. Justice Manisty, in some remarks he made at Maidstone, appears to think that his action in a recent celebrated case "astonished the whole world." We can assure his Lordship he overrates the importance of his "*dicta*." We have, at great expense, communicated with the Emperor of China and the King of the Cannibal Islands, and both confess that they know as little of his Lordship's judgment as his Lordship appeared to know of *Perkins* v. *Dangerfield* (W. N. 1879, p. 172, coram Lords Justices Coleridge, Bramwell and Brett).

Mr. Commissioner Kerr has been to the front lately. In one case he fined a plaintiff 5*l.* for contempt of Court, the plaintiff having told him that his refusal to hear any more of the case "would not improve his position as a judge." Just as though Mr. Commissioner Kerr's position as a judge needed improving. Truly that plaintiff well deserved the fine.

There can be no doubt that his Honor's law as to stray dogs is sound. A man who finds and keeps a stray dog has no legal claim against the owner for expenses: he merely does "a kind and humane act;" but the owner, in not only resisting the claim but asking for costs, acted "very scurvily" in his Honor's opinion.

We suppose his Honor is right that a man several centuries ago selling bad fish in London, was placed in a tumbril and carried through the streets, a salutary practice abandoned in favour of the more modern, but less effective, methods of civilization. Did the practice several centuries ago extend to lawyers giving bad law as well as fish dealers selling bad fish?

A correspondent writes us on a point in connection with the Preliminary Examination, which must not be forgotten. The questions, he thinks, are good enough—he has apparently forgotten our note last month that questions are repeated word for word from former examinations—the standard of marks needs raising. His chief point, however, is, that while stiffening the Preliminary, we must not forget the other inlets to the profession afforded by the Oxford and Cambridge Examinations, which he maintains are not as stiff as the Preliminary. This seems a startling contention, and one open, we should say, to discussion.

It is all very well for laymen to laugh at the decision that a man who puts his hand in an *empty* pocket is not a pickpocket, and that a thief loitering in the street cannot be convicted of "frequenting" the street. The decisions are not legal quibbles. Pray how can a man pick nothing out of a pocket? But although not a pickpocket, there is no reason why he is not guilty of an assault with an intent to commit a felony. Again, if once being seen in a street is "frequenting," then lots of poor fellows waiting for "sweethearts" would find themselves speedily before the nearest "beak."

Our correspondent who sends us the following certainly ought to be on the Rule Committee of the Judges. We have noticed this point ourselves, and have often wondered what compensation plaintiffs found "in attaching a solicitor":—

"A. acting as solicitor for B., who is made defendant in an action, undertakes to appear for him, and indorses the original writ to that effect. C., the plaintiff's solicitor, after the usual eight days has expired, finding that no appearance has been entered, proceeds to sign judgment. He finds out at this point that there has been a default of appearance, and the 'undertaking' goes for nothing; for under Order 13, Rule 2, he has to file an affidavit of service, and before he can do this he must personally serve B., and give him *another* eight days in which to appear. The only remedy C. has for this breach of faith on the part of his professional brother is to move the Court, under Order 12, Rule 18, to attach him; but how this can in any way compensate the plaintiff we fail to understand. Surely the rule might be amended in some way so that the writ, with the 'undertaking to appear' indorsed upon it, might be taken as evidence of service; this would prevent the delay which now occurs, and at any rate make

the unscrupulous solicitors (if any!) less likely to mislead with their promises their too-confiding brethren."

There can be no doubt that the reckless driving of hansom-cabs in London must be sternly repressed. The recent sad death of a well-known Middlesex magistrate, who was knocked down in Pall Mall and died from injuries received, calls attention to the danger in a way which the deaths of hundreds of private individuals could not have done. The nuisance must be stopped, and drivers of all classes must learn that pedestrians in crossing a street have an equal right to the roadway with vehicles, and that, legally, when turning a corner, &c. vehicles must exercise as much, nay more, care than the pedestrians themselves.

As all the papers have had their say about the merits and demerits of rival law reports, we suppose our readers will expect us to express an opinion. We really fail to see anything in the discussion at all; in all probability all the writers of letters to the papers are in some way or other connected with some set of reports: and no man in the slightest way so connected can possibly give any opinion worth perusal. It is nothing more than a trade squabble between business competitors; meantime each is put on its mettle, and the public benefit. It is scarcely possible for any reports to be perfect; brevity must be combined with comprehensiveness; terseness with perspicuity; the selection must include all important decisions and yet must be kept within reasonable limits; our book-shelves must not be filled at the rate of half-a-mile a year, and yet we must feel certain that in our book-case we have all necessary cases reported. The only solution to the difficulty we know is to subscribe to all the reports; fifteen or sixteen pounds per annum and the cost of a few miles of book-shelves will cover the outlay; they are a good investment for a lawyer, will always sell and realize more than twenty pound shares in a "Fish Dinner Company" or an "African Gold Mine."

From Hereford comes a funny verdict. Charge of two men for stealing and one for receiving stolen goods. Verdict, "That prisoners took the goods, but there was no evidence that one received them, and we therefore give both the benefit of the doubt." It is difficult to give that jury the benefit of the doubt as to their sanity.

Governesses, tutors, and clerks, are, as is well known, entitled to three months' notice to leave. To these must now be added commercial travellers. The point has not been before definitely settled by the High Court; there is it appears a custom to this effect with regard to commercial travellers, and the Court had no difficulty therefore in *Grundon* v. *Masler & Co.* in finding for the plaintiff.

How could a man contend that the face of a forecast barometer was a book, and entitled to registration under the Copyright Act, 1842. So the plaintiff in *Davis* v. *Commelli* endeavoured to contend. Mr. Justice Chitty had no hesitation in holding that a barometer most distinctly is neither book, chart, nor map.

The decision in *Burton* v. *Hughes*, should rejoice house-agents keen after commissions. It has just been decided that if A., with the consent of the vendor, introduces C., he, A., will be entitled to his commission, even if the sale is effected through X. and Z. different agents, and would have been brought about even without his A.'s interference. Good for agents, bad for vendors.

The "Law Times" always has a column entitled, "Proceedings affecting the Profession"; a very useful column too. But we emphatically protest against such a paragraph as recently appeared. "Mr. X., solicitor, was charged at Bow Street Police Court with being drunk and disorderly; Mr. X. pleaded he had been dining out and had taken a little too much wine, very sorry, &c." Why, in the name of charity and erring mortality, is it necessary or desirable to inform the profession of this, Mr. X.'s unfortunate little slip? We suppose the "Law Times" never dines out and has therefore no sympathy: but such paragraphs should not be inserted, they appear spiteful and ill-natured. If the "Law Times" desires to warn us against any of our professional brothers they will find plenty better cases to put in their columns than recording that Mr. X., solicitor, got tight, or was seen putting his boots outside his own front door, or out very late last Wednesday night.

Lord Bramwell has written a pamphlet. He objects to all statutes having for their object the protection of the weak against the might of the strong, *e. g.*, the Employers' Liability Act, the Payment of Wages in Public Houses Act, and similar statutes. His Lordship's pamphlet is entitled "Laissez Faire." His Lordship's recent utterances in connection with the Inns of Court show the correct meaning of the title in his Lordship's opinion; let us do as we like with other people, and other people's property.

Moral for those about to be articled. Remember to have inserted in the articles an agreement that if either clerk or principal dies within first twelve months, so much shall be returned; the second twelve months so much, and so on. If there is no such clause, then, according to Mr. Justice Pearson in

Ferns v. *Carr*, if the principal dies before the expiration of the articles, the clerk can obtain no return of any part of the premium.

We remember once reading somewhere that an American orator in the course of his harangue chanced to make the quotation "Amicus Plato, amicus Socrates, sed major veritas." His surprise was great next morning, when in the daily paper he saw the phrase phonetically rendered, "I may cuss Plato, I may cuss Socrates, said Major Veritas." That a knowledge of Latin is as necessary to the law student as to the professional reporter the following anecdote which has reached us will show:—A "ten years" man, who had obtained an order dispensing with the necessity of his passing the "Preliminary," had been attending some law lectures, and had been very industriously taking notes. A friend of his, not so industrious, going up for his "Final," asked him to lend him the notes. Whilst perusing them he came across one which first puzzled and then amused him. It was "contracts for sale of land, contracts of marine and fire assurance, contracts by companies for sale of shares, and all contracts 'you bury me if I die,' are invalidated by misdescription or non-disclosure." The ten years man must have had the 'utmost good faith' in the intelligibility of his notes.

Mr. Yates is, we believe, the editor of a society journal called the "World." We do not, ourselves, admire much that appears in the pages of the "World" and kindred papers, but a Court of Appeal ought to give the correct *legal* interpretation to statutes irrespective of the personal *status* of the persons interested. Mr. Yates is in prison; he has the consolation of knowing that this is not the result of a criminal prosecution but of civil proceedings. This sounds contradictory and ridiculous; it is beyond doubt, but certainly not more ridiculous than the judgment of the Court of Appeal. The Newspaper Act, 1881, says no criminal prosecution shall be commenced without the fiat of the Director of Public Prosecutions; the prosecution of Mr. Yates was commenced without this *fiat;* the Queen's Bench, too, jealous of its power, said that the statute only meant that no indictment could be presented and did not apply to an information; the Court of Appeal refuses to interfere with the decision of the Queen's Bench, consequently Mr. Yates finds himself in prison contrary to the express terms of an Act of Parliament, which says that no criminal prosecution can be commenced without a certain consent.

Now there has been a lot of correspondence to find out what the legislature meant; and in this difficult task judges often deserve our warmest sympathy. But inserting words bodily in a sentence is not finding out what certain words mean. There is simply no ambiguity about the phrase at all. "No criminal prosecution, &c." Are proceedings by way of information criminal prosecutions or not? They are not civil proceedings: they must, then, be criminal proceedings. The judges have, therefore, again stepped beyond their legitimate duty. They are not appointed, and it is every month becoming more necessary to remind them of this simple fact, to say what the law should be, but what the law is; this most emphatically they have not done. This very point must have been raised before the Committee when the bill was passing, and it must have been intended that the Act should apply to both informations and indictments: hence the insertion of the strong phrase, "No criminal prosecution." We have no special sympathy with Mr. Yates, but we think he did well to abstain from an appeal, although, legally, it is to be regretted.

There is, at the present day, a distinct tendency for officials to "officialise" too much. By what authority has the Postmaster-General power to direct postmasters to require the signature of postal orders in their presence? It seems, on inquiry, that no regulation has been made under the proper Acts, in which there is no mention of this power; consequently this rule is *ultra vires* and appears contrary to the spirit of the Acts, whatever the Committee who introduced these postal orders may have intended.

We have been somewhat troubled in our minds about the Yorkshire Registry Act, 1884. Many Yorkshire friends have asked us to go fully into them; but in the interest of dwellers outside the county we do not feel justified in doing this. We think the justice of the case will be met by drawing attention merely to the main alterations in the law effected with regard to conveyances of lands in Yorkshire and Kingston-upon-Hull. (1) Firstly, then, a lien for unpaid purchase-money, and a lien created by deposit of title deeds, may be registered, and unless and until registered such liens have no effect against a registered conveyance for value. (2) Instead of registering the assurance of lands a caveat may be entered in the registry, and if the assurance is registered within six months it will take effect as if registered when the caveat was entered. (3) When the registration of a will cannot be effected, a notice of the will may be registered, and this will be effectual if the will is registered within two years of the testator's death. (4) On an intestacy an affidavit of intestacy may be registered by any person interested. (5) All assurances entitled to be registered rank according to date of registration, and not according to date of assurance. (6) A registered assurance for value will have priority over an unregistered assurance in the absence of

actual fraud, even though the person taking under the registered assurance have notice, actual or constructive, of the unregistered assurance. This reverses, as to lands in Yorkshire, the decision in *Le Neve* v. *Le Neve*, a decision which still applies to lands in Middlesex. If the registered assurance is voluntary, then the voluntary grantee, by registering, does not gain any priority which was not possessed by his grantor. (7) Registration is of itself notice. Under the old law registration was not notice, and unless the register was searched (and a purchaser was not under obligation to search), the purchaser would have been a purchaser without notice. By this alteration an equitable mortgagee of lands in Yorkshire by registering his mortgage secures his priority over a subsequent legal mortgagee or purchaser. (8) Tacking, with regard to lands in Yorkshire, is abolished as from 1st January, 1885. (9) Provision is made whereby an official search of the register may be made, and a certificate of the result, signed and sealed by the registrar, is to be given, and solicitors, trustees, and others in a fiduciary capacity, are protected from the consequences of any error in the certificate; and a like provision is made whereby certified copies and extracts from the register may be obtained.

CASES OF THE MONTH.

I.—GENERAL CASES.

[The references at the heads of the cases under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXVIII., where further details of the case may be found.

The references at the foot of the cases under Fisher, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., and Tudor, refer respectively to the last editions of Fisher's Digest, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, and Tudor's Conveyancing Cases, and indicate the page at which a note of the decision should be entered.]

Is a Bill of Sale, the Money secured by which is repayable 48 *hours after demand, void as not being drawn in the form given in the Bills of Sale Act,* 1882?

Bishop & Sons v. Beale.

On the authority of *Heatherington* v. *Groome* (Law Notes, Vol. III. p. 358), Manisty, J., held that such a bill was void. One of the objects of the legislature in framing the Act of 1882 was to enable persons to ascertain by inspection of the bill of sale at what time the money was due, so as to see whether default could have been made or not; and if money secured by bill of sale could be made repayable on demand, or so long after demand, this object would be defeated. The grantor must be protected from the grantee by having the date of repayment definitely fixed upon the instrument.

(5 Fisher, p. 656; 1 Prideaux, Ch. on Bill of Sale.)

Is an Order for Sale under Sect. 25 *of the Conveyancing Act,* 1881, *in a Foreclosure or Redemption Action a matter of Right or of Discretion?*

Clarke v. Pannell.

(S. J. 147).

It is a matter of right North, J., decided in the above case, subject to the provisions of sub-s. 3.

(5 Fisher, p. 656.)

If Bearer Bonds are delivered to one Member of a Firm of Solicitors for safe Custody, and he absconds with the Bonds, are the other Members of the Firm liable to make good the Loss?

Cleather v. Twisden.

(T. 175; S. J. 148; L. J. 157; L. T. 149.)

The answer to this question depends on the circumstances of the case, but ordinarily the other members would not be liable, since the safe custody of, and the collecting of coupons on, bonds does not fall within the ordinary business of a solicitors' firm. This is very clearly shown by *Harman* v. *Johnson*, 2 E. & B. 61. In the above case, however, the facts were somewhat peculiar, and as follows:—A firm of solicitors, Hayes, Twisden, Parker and Co., had as clients the executors and trustees of the will of Colonel Cleather. Parker received from the trustees some valuable New Zealand and Cape of Good Hope bearer bonds for safe custody. These bonds were referred to in the bill of costs by Messrs. Hayes & Co. against the trustees; in letters entered in the firm's letter book and written by Parker, they were mentioned as being "in my possession." Parker had collected the coupons on the bonds, and shortly before they became payable from time to time, he had sent the money to the trustees by cheques of the firm. Subsequently, Parker absconded taking with him these bonds, and the trustees brought this action to make the only continuing partner of the firm of Hayes & Co., viz., Mr. Twisden, responsible for the value of the bonds. By way of defence it was urged, that what Parker had done had been by way of private arrangement with the trustees, that the other partners knew nothing of it, and though it was

shown, as above, that the coupon money had been paid by the firm's cheques, yet that Parker had always paid into the firm account the amount of the coupons by crossed cheques of his own. Further, that the bill of costs in which there were entries referring to the bonds had never been delivered, and that one of the letters, though entered in the firm's letter book, stated that the bonds were in his, Parker's, possession, and not in that of the firm. Denman, J., held that Twisden was responsible for, though innocent of, his partner's fraud. But the Court of Appeal reversed this decision; the work done in respect of which the fraud had occurred not being in the ordinary course of a solicitor's business, the *onus* lay on the plaintiffs to show that the defendant was in some way party to the fraud, and they had not sustained this *onus*.

(5 Fisher, p. 906; Snell, p. 514: Aids, p. 142.)

Do the Terms of a Bill of Lading apply to Goods referred to in the Bill, but stowed by the Shipowner on Deck instead of in the hold of the Ship?

Dixon v. The Royal Exchange Shipping Co.
Newell v. The same.

(T. 178; S. J. 147.)

In such a case the shipowner is not protected by the terms of the bill of lading, but the goods are carried subject to the common law liability of a carrier of goods by sea. If such goods are properly jettisoned, the owner of them cannot sue the carrier for the loss, but must claim from the owners of the property saved "general average contribution."

(6 Fisher, p. 1291; Newson on Shipping, p. 68.)

If Trustees offer Property for Sale and some of the Conditions are unduly Restrictive, and so Depreciatory, can the Purchaser refuse to complete?

Dunn v. Flood.

(S. J. 204; L. J., Vol. XXI. 10; L. T. 226.)

He can do so. In this case a condition in a sale by trustees to the effect that the respective lots were sold "subject to the existing tenancies, restrictive covenants, easements, quit-rents, and other incidents of tenure (if any) affecting the same," the condition proceeding to provide that the purchasers of the different lots should covenant to perform the restrictive covenants affecting the lots purchased by them, was unnecessary and improper, as the evidence showed that there were no tenancies existing, and no restrictive covenants, and the purchaser was allowed to resist specific performance. The Court of Appeal said that, though it was the custom to insert such a wide condition, and absolute owners on selling were of course justified in inserting it, yet trustees were surrounded by pitfalls to which others were not exposed, and must not insert any conditions of sale of a depreciatory character which the title did not require. And having done so in this case they were not in a position to ask the Court's assistance.

(Snell, p. 551; Aids, p. 155.)

Has an Articled Clerk the Right to Demand a Return of a Portion of his Premium in the event of the Solicitor to whom he is Articled dying before the Expiration of the Term?

Ferns v. Carr.

(T. 220; L. T. 227; S. J. 207.)

The articled clerk has, in such an event, no debt due to him from the representatives of the solicitor either at law or in equity, and the Court's jurisdiction over solicitors as officers of the Court does not authorize it to interfere in cases of contract between a solicitor and a third party; and therefore, the Court in this case decided the question we have set out in the negative. To give an articled clerk such a right, there must be a distinct stipulation.

Can a Purchaser avoid the Liability to pay Interest from the time fixed for Completion, by giving notice to the Vendor that the Purchase-money is ready, and is lying idle at the Bank.

Re Gold and Norton's Contract.

(W. N. 6; L. T. 207.)

That he can do this when the contract is silent as to the payment of interest is clear, and even where the contract contains an express clause, as in the above case, that "interest shall be payable from the time fixed for completion, if, from any cause whatever, the purchase should be delayed," the purchaser can avoid liability to pay interest by giving the above notice, if the failure to complete arise more from the fault of the vendor than the purchaser. And this even though the purchaser may take the profits from the time fixed for completion. So held by Kay, J.

(1 Prideaux, Ch. on Conditions of Sale.)

To what Notice of Dismissal is a Commercial Traveller entitled?

Swindon v. Master & Co.

(T. 205.)

In the absence of agreement three months' notice is necessary and sufficient.

(Chitty's Contracts, 10th ed. p. 533.)

Must a Document accompanying the Pledge of Goods as a Security for Money be registered as a Bill of Sale to make it valid?

In re Hall, Ex parte Close.

(54 L. J., Q. B. 43.)

Cave, J., had no hesitation in deciding that such a document is not a bill of sale within the meaning of the Bills of Sale Acts, since the goods are in such a case no longer in the possession of the grantor, and the case does not fall within the mischief at which these Acts are directed, viz., that a man should have credit for goods which are in his possession, but which are not his own.

(1 Fisher, p. 1824.)

In what Form should a Judgment for Foreclosure be drawn up, in a case where the Plaintiff also claims a personal Judgment on the Mortgagor's Covenant to pay Principal and Interest?

Hunter v. Myatt.

(S. J. 130; L. J. 153.)

This was an action of foreclosure brought by a mortgagee against the mortgagor and a second mortgagee. The plaintiff also claimed judgment on the mortgagor's covenant, and the question stated above arose. Pearson, J., following a form which had been used by the late Master of the Rolls in an important case, *Grundy* v. *Grice* (see Seton, 4th ed. p. 1030), directed judgment in the following terms:—The mortgagor to pay the money due within a month from the date of the judgment; an account to be taken of what was due to the plaintiff under and by virtue of his mortgage, and for his taxed costs; in taking the account regard to be had to the amount, if any, which the plaintiff might have received under the above direction for payment. This to be followed by the ordinary provisions for redemption and foreclosure, the second mortgagee to be allowed six months, and an additional one month to the mortgagor.

The form of judgment adopted enables the plaintiff to issue execution before the certificate of the chief clerk is complete, a course he could not pursue if the usual order for foreclosure had been made.

(5 Fisher, p. 659; Fisher's Mortgages, 4th ed. p. 1012.)

Can a Marriage Settlement, the Execution of which was obtained by a False Representation by the Wife, be set aside?

Johnston v. Johnston.

(S. J. 145; L. T. 149.)

If the marriage—the consideration for the settlement—has taken place, since that consideration remains, the settlement cannot be set aside, and so in the above case the husband was held bound by the settlement. Before marrying his present wife, A. had obtained a representation from her that she had at her own suit been divorced from her first husband on the ground of his adultery and cruelty, and that she had not cohabited with nor had any connection with her second husband before his marriage with her. Acting on this representation, he, A. (the third husband), settled property on her and the children of the marriage, and married her. Subsequently, A. discovered that the representation made him was false, since his wife had been divorced from her first husband at his suit, and on the ground of her having committed adultery with the man who became her second husband. Thereupon, A. sought to set the settlement on one side; but Pearson, J., struck out the statement of claim, as it showed no cause of action, and his decision was affirmed on appeal.

(4 Fisher, p. 64; Snell, p. 473; Aids, p. 125.)

Can a Testator, under 43 *Geo.* 3, *c.* 108, *devise Land with a Church already built upon it?*

O'Brien v. Tyssen.

(T. 168; L. T. 130.)

He can do so; and if he devises to a third person upon a secret trust, the Court will enforce the trust, since, owing to 43 Geo. 3, c. 108, it is not an illegal trust under 9 Geo. 2, c. 36.

(Enter in Tudor's Cases, as a note to *Corbyn* v. *French*.)

Is an Architect appointed by a Minute of a School Board for some purposes of the Board an "Officer" within the meaning of Rule 7 of Schedule 3 to the Education Act?

Scott v. The Great and Little Clifton School Board.

(L. T. 150.)

He is; and therefore his appointment need not be under the seal of the board in order to enable him to recover for services rendered in respect of his appointment, even though the amount exceed 50*l*. Even had he not been an "officer," Mathew, J., said, that the rule established by cases, that the contract of a corporation must be under its common seal, did not apply to such a case as the present, where the contract was for a purpose incidental to the performance of the duties of the School Board, and the board had, with full knowledge of the facts, adopted the benefit of the work.

(6 Fisher, p. 1019; Shirley, p. 169.)

Can a Husband authorize a Third Person to enter into a House bought by his Wife with Money obtained by her own industry?

Weldon v. De Bathe.

(W. N. 1884, 250; L. J. 157.)

In this case, Mrs. Weldon sued for damages for a trespass, committed, as she alleged, by the defendant entering her house against her will. The defendant resisted the action on the ground that he entered under the authority of the plaintiff's husband, and the question set out above arose. The Queen's Bench Division considered the contention of the defendant good, but the Court of Appeal reversed the decision, and so our question is answered in the negative.

Quære.—Whether the husband had himself a right to enter into his wife's house against her wish.

(4 Fisher, p. 326; Thicknesse's Husband and Wife, p. 290.)

Re Wood, Wood v. Kimber.

(T. 192; S. J. 183; L. T. 207.)

The decision of Kay, J. (*ante*, Law Notes, Vol. IV. p. 12), was affirmed by the Court of Appeal. While the Court was of opinion that sect. 39 of the Conveyancing Act, 1881, ought to be liberally construed, and that the power could be exercised not merely to promote the pecuniary benefit of the wife, but that the restraint on anticipation might be removed in order that a benefit to the husband and children might also be such a benefit to the wife as was contemplated by the Act, yet in the case in question the Court considered it could not be for the benefit of the family that the small property of the wife should be eaten up in maintaining the children.

(4 Fisher, p. 355; Snell, p. 371; Aids, p. 107.)

II.—PRACTICE CASES.

[The references under Snow, Stoney and Gibson, are respectively made to the last editions of Snow & Winstanley's Annual Practice; Stoney & Andrews' Judicature Practice, and Gibson & McLean's Practice of the Courts. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

If a Defendant swears that Documents, of which Inspection is required, do not relate to the Question at Issue, can the Plaintiff obtain an Order for Inspection?

The Compagnie Financiere et Commerciale du Pacifique v. The Peruvian Guano Co.

(T. 188.)

He cannot, unless he is prepared to show that the documents in dispute are material.

(3 Fisher, p. 375; Snow, p. 384; Stoney, p. 261; Gibson, p. 165; Ord. XXXI. r. 18.)

Is the Insolvency of an Appellant a sufficient ground for the Court to order him to give Security for Costs?

Farrer v. Lacey Hartland Co.

(S. J. 183; L. T. 207.)

The respondent in this case applied for security for costs, in respect of an appeal, to be given by the appellant, who was shown by the evidence to be insolvent, and the question given above arose. The appellant urged that mere insolvency was not a ground for requiring security from an appellant, and in support of his contention he cited *Roulke* v. *The White Horse Colliery Co.*, L. R., 1 Q. B. D. 556. The Court of Appeal, however, held that the decision in that case was given under special circumstances, and ordered the appellant to give security: and so we answer the question set out in the affirmative. This decision follows *Harlock* v. *Ashberry*, Law Notes, Vol. I. pp. 53, 90.

(5 Fisher, p. 1782; Snow, p. 672; Stoney, p. 412; Gibson, p. 257; Ord. LVIII. r. 15.)

Can a Garnishee Order be made in favour of a Judgment Creditor, whose Judgment is at the time of Application more than Six Years old?

Fellows v. Thornton.

(W. N. 248 (1884); L. J. 156; L. T. 164.)

Yes, as the procedure of attaching debts under Ord. XLV. may be exercised, notwithstanding the lapse of more than six years from the judgment. So held by the Divisional Court, on appeal from a judge's decision in Chambers.

(1 Fisher, p. 484; Snow, p. 512; Stoney, p. 338; Gibson, p. 240; Ord. XLV. r. 1.)

What constitutes a Good Cause for depriving a successful Plaintiff of his Costs under Ord. LXV. r. 1?

Pool v. Lewin, Crawcour & Co.

(T. 165.)

The Master of the Rolls said that a judge in depriving a plaintiff who has really succeeded in his action, that is, has received more than nominal damages, ought to be very careful. A plaintiff who brings a successful action ought to have his costs, and in answering the question set out above, the learned judge said, "to constitute 'good cause' for depriving a successful plaintiff of his costs there must have been some unfairness or oppression in bringing or continuing the action." Consequently, Hawkins', J., order, depriving the plaintiff in the above action, who had recovered 10*l.* in an action of trespass, of his costs, was reversed.

(2 Fisher, p. 1303; Snow, p. 663; Stoney, p. 437; Gibson, p. 245; Ord. LXV. r. 1.)

When a Stay of Execution pending an Appeal is asked for, ought the Court of first instance to require an Affidavit in support of the Application?

Weldon v. Johnson.

(T. 168.)

In this case the Divisional Court granted a stay of execution pending an appeal without requiring any affidavit in support, and when the appeal was heard in the Court of Appeal, the Master of the Rolls said, "He was sorry that the Divisional Court had not acted upon affidavit—the stringency of the rule should not easily be done away with. The rule that an appeal shall not be a stay of execution is very important, for, but for the rule, appeals would be multiplied beyond measure." The appeal in this case was heard and dismissed; but in future applications for a stay of execution should be supported by affidavit; and so our question is answered in the affirmative.

(Snow, p. 623; Stoney, p. 413; Gibson, p. 257; Ord. LVIII. r. 16.)

III.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Ringwood and Baldwin are made respectively to the last editions of Robson, Yate-Lee, Ringwood and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

If a Bankrupt is in receipt of "Professional Earnings," can the Court, under Sect. 90 of the 1869 Act (sect. 53 of the 1883 Act), make an Order for Payment of such Earnings, or part thereof, to the Trustee for the benefit of Creditors?

Re Hutton, Ex parte Benwell.

(W. N. 240 (1884); S. J. 132; L. J. 149.)

In other words, are future professional earnings "income or salary" within the meaning of the section? The bankrupt was a "bone setter," and as such earned a large professional income, which the trustee sought to attach by order of the Court. The Registrar refused the order, and his decision was confirmed by the Court of Appeal. The money which a man might earn by the exercise of his personal skill and knowledge was not income in the nature of salary, and the word "income" used in the Act must be construed as something *ejusdem generis* with salary; and so our question is answered in the negative.

(1 Fisher, p. 874; Robson, p. 498; Y.-Lee, p. 450; Baldwin, p. 134; Ringwood, p. 62; Sect. 53.)

Can the Board of Trade, under Sect. 162 of the Act of 1883, inquire into the Accounts of a Trustee in Bankruptcy or Liquidation under the Act of 1869, in a case where the Trustee has obtained his Release?

Ex parte The Board of Trade, In re Chudley.

(T. 164; W. N. 245 (1884); S. J. 133; L. J. 155; L. T. 133.)

Yes; if, *after the passing of the Act of* 1883, the trustee had funds in his hands which he ought to have paid into the Bank of England. In the above case the liquidation was an old one, having happened 10 years ago, but at the time the Act of 1883 was passed the trustee had in his hands some 75*l.* belonging to the estate. He called a meeting

of the creditors on October 3, 1883, who passed a resolution giving the trustee the 75*l.* for his trouble and releasing him from his duties as trustee. The Board of Trade sought to compel the trustee to render his accounts. He stated that he could not furnish full accounts as the debtor had died, and many papers had been lost owing to the lapse of time which had occurred, and the question above arose. Cave, J., said that the trustee was within the meaning of the words, "Trustee or other person" used in sect. 162, sub-sect. 2 (6), and he must, within three weeks, submit the accounts to the Board of Trade.

(1 Fisher, p. 1506; Robson, p. 672; Y.-Lee, p. 563; Ringwood, p. 98; Sect. 162.)

Can a Special Proxy be given in the alternative?

Re Cawdle.

(S. J. 133.)

Under the Rules a special proxy may be given to any person to vote "for or against any specific resolution, or for or against any specified person as trustee." In the above case a person (not capable of holding a *general* proxy), was appointed to vote at the first meeting, for the acceptance of a composition *or* for bankruptcy, and for the appointment of himself as trustee. The official receiver refused the proxy on the ground that it was a general and not a special one, since it was in the alternative, and the County Court judge held that the objection was properly taken, since a special proxy must be confined to one point, and must not be in the alternative.

(1 Fisher, p. 1103; Robson, p. 233; 7 Lee. p. 575; Baldwin, p. 99; Ringwood, p. 156; Sched. I., r. 17.)

Can the Bankruptcy Court question the Consideration of a Judgment Debt? If so, would a Statement by the Bankrupt, who has since died, be admissible in Evidence as Proof of the Consideration?

Ex parte Edwards, In re Tollemache.

(W. N. 1884, 250; S. J. 148.)

It has long been a settled rule, that the Court of Bankruptcy can go behind even a judgment debt to find out whether or not there was any consideration for it. In the above case, the bankruptcy occurred as long ago as 1842, but the proceedings had never been closed. The bankrupt was dead, and assets having come to hand, a creditor sought to obtain payment as a judgment debt obtained against the bankrupt. The circumstances of the debt being suspicious, the Court of Bankruptcy called for evidence of the consideration for the debt, and the creditor sought to establish the consideration by a statement made by the bankrupt admitting the debt before his death. The Bankruptcy Court, however, refused the statement, and the Court of Appeal upheld the decision; for though the statement might be against the interest of the debtor, yet as it would only be so in the event of the estate showing a surplus after payment of all debts, it was not a statement against interest within the rule laid down in *Higham* v. *Ridgway*, and so could not be admitted. Consequently we answer "yes" to our first question, and "no" to our second question.

(1 Fisher, p. 1014; Robson, p. 191; Y.-Lee, pp. 70, 205; Baldwin, pp. 43, 294.)

Does an Appeal from an Order of the Registrar in Bankruptcy on a Judgment Summons lie to the Divisional Court or to the Court of Appeal?

Ex parte Genese, Re Lascelles.

(53 L. J., Q. B. 578.)

It will be remembered that the jurisdiction of the judges of the Queen's Bench Division in hearing judgment summonses under the Debtors Act, 1869, has been, under the Bankruptcy Act, 1883, transferred to the London Registrars in Bankruptcy, and owing to the somewhat curious provisions respecting appeals in bankruptcy, enacted by the Act of 1883, as altered by the Act of 1884, the above question arose. The Court decided that the appeal is to the Court of Appeal.

(1 Fisher, p. 1467; Robson, p. 834; Y.-Lee, p. 522; Baldwin, p. 257; Ringwood, p. 138; sect. 103.)

Has an Official Receiver power before a Trustee is appointed, to Sell the Property of the Bankrupt (a) *with the Sanction of the Board of Trade,* (b) *without such Sanction?*

Ex parte Turquand, In re Parkers.

(T. 165; W. N. 1884, 246; S. J. 132; L. J. 155.)

Almost immediately after the bankruptcy of Messrs. Parkers, and before the first meeting of creditors was held, the official receiver, without the authority of the Board of Trade, and without consulting the creditors, advertised and sold some property of the debtors. The amount realized was over 5,500*l.*, and, in addition to the expenses incurred, the receiver when accounting to the trustee sought to retain his six per cent. commission as

allowed by Table D. The trustee refused to allow the commission to be deducted, on the ground that the receiver had no power to sell, and the question we have set out arose. Cave, J., stated that under sect. 54 the official receiver had all the powers of a trustee, including the right to sell; but looking to the words of sect. 70, it was clear that it was not intended that he should have all these powers, but only those referred to in that section, and since a power of sale was not there given, it was clear he could not sell pending the appointment of a trustee, at any rate not without the Board of Trade's consent. Whether he could do so with such consent the judge declined to say.

(1 Fisher, p. 830; Robson, p. 423; Y.-Lee, pp. 451, 490; Baldwin, pp. 69, 76; Ringwood, pp. 42, 121; sects. 54, 70.)

What Effect has the Disclaimer of a Lease by the Trustee in Bankruptcy of the Lessee on an Equitable Mortgage of the Lease?

Wood v. Hayes.

(T. 207.)

The equitable mortgagor's rights are not affected. He holds the lease deposited with him as against the lessor. This follows the law as laid down in *Buxton, Ex parte*, 15 Ch. D. 829.

(1 Fisher, p. 890; Robson, p. 484; Y.-Lee, p. 459; Baldwin, p. 145; Ringwood, p. 110.)

IV.—CRIMINAL CASES.

[The references under Harris, Stephen, Harrison, and Stone are respectively made to the last editions of Harris' Criminal Law, Stephen's Digest of the Law of Crimes, Harrison's Guide to Crimes, and Stone's Justices Manual.]

Can a Parent, who has been once Convicted under Sect. 29 of the Vaccination Act, 1867, for not having had his Child Vaccinated, be again Convicted of the same Offence?

Black v. The Guardians of Epping Union.

(T. 184; L. T. 133.)

Certainly not, decided the Court of Queen's Bench. The only remedy, if the parent continues to neglect to have his child vaccinated after a conviction, is under sect. 31 of the Act, by virtue of which the justices can make an order directing the child, if under 14, to be vaccinated whether the parent is willing or not. The question set out above is conclusively answered in the negative by the decisions in *Pilcher* v. *Stafford*, 4 B. & S. 775; and *Allen* v. *Worthy*, L. R., 5 Q. B. 163.

(7 Fisher, p. 266; Stone, p. 802.)

Have Justices of the Peace jurisdiction to commit for contempt a Person who voluntarily offers himself as a Witness in a Bastardy Case should he refuse to answer Questions put to him?

Regina v. Flurell.

(L. T. 150)

It is clear that, under sect. 70 of 7 & 8 Vict. c. 101, the justices have power to commit to a house of correction within their jurisdiction any witness who has been summoned to give evidence in such a case; but it was doubted in the above case if they had such power over a person who, without being summoned, voluntarily appeared as a witness. The Queen's Bench Division decided that they had such power; and so we answer "yes" to the question set out.

(2 Fisher, p. 837; Stone, p. 605.)

Is the Fiat of the Director of Public Prosecutions necessary under the Newspaper Libel Act, 1881, to a Prosecution by way of Criminal Information?

Regina v. Yates.

(T. 193; S. J. 205; L. J. 9, Vol. XXI.; L. T. 226.)

It is not. The words of the Act "that no criminal prosecution shall be commenced against any proprietor, publisher, or editor, or any person responsible for the publication of a libel, without the fiat or allowance of the Director of Public Prosecutions in England, or the Attorney-General in Ireland," only apply to prosecutions by way of indictment, and not to those by way of criminal information. So decided by the Court of Appeal, upholding the decision of the Queen's Bench Division.

(Harris, p. 118; Stephen, p. 208; Harrison, p. 105.)

V.—PROBATE, DIVORCE, ADMIRALTY AND ECCLESIASTICAL CASES.

[The references under Dixon, Coote, Dixon's Div., Browne, Roscoe, Smith's Ad., Smith's Ecc. and Harrison are respectively made to the last editions of Dixon's Probate, Coote's Probate, Dixon's Divorce, Browne's Divorce, Roscoe's Admiralty, Smith's Admiralty, Smith's Ecclesiastical Law and Harrison's Probate and Divorce.]

Has the Divorce Division power, after a Decree of Nullity of Marriage, to set on one side altogether a Settlement of Property, and direct the Trustees of the Settlement to re-transfer such Property to the Petitioner?

Addington v. Mellor.

(S. J. 131.)

In the above case a decree of nullity of marriage had been obtained on the ground of the husband's

impotency, and after decree the husband's life interest in property settled by the wife was extinguished by order of the Court. Subsequently the petitioner applied for a further order putting an end altogether to the settlement, and the question stated above arose. On the authority of *Chapman* v. *Bradley*, 12 W. R. 140, Butt, J., decided that the settlement property could, under the circumstances, be re-transferred to the petitioner free from any of the trusts of the settlement, for, as the marriage was null and void, no trust had ever operated; and so our question is answered in the affirmative.

(4 Fisher, p. 96; Dixon's Divorce, p. 349; Harrison, p. 152.)

Can the Admiralty Division stay Proceedings in an Action in rem instituted by a Foreign Government until that Government has given Security for the Amount of the Defendant's Counter-claim?

The Newcastle.

(L. T. 207.)

Yes; under sect. 34 of the Admiralty Court Act, 1861.

(Roscoe, p. 142; Smith's Ad. p. 120.)

THE TROUBLES OF AN ARTICLED CLERK.

By A Member of the Profession.

(*Continued from Vol. III. p.* 336.)

It must, I think, be confessed that an articled clerk's five years' servitude is *not* very lively. If he does his duty and sticks to his work, he must at times feel weary with the dull and monotonous routine; and I cannot say that I found my days altogether cheerful. It was one of my "troubles" that I had very little time for amusements, and could not, except on rare occasions, take part in my favourite games of cricket and football. Things were different in those days, and I think it was a mistake to make us stick so closely to business and to long office hours. But my life was every now and again enlivened by episodes in the office or connected with the business of an interesting nature; and I am tempted to recall two or three in these pages, as they may serve, perhaps, both to amuse and instruct some of those who are now placed in a similar position.

It was in the second year of my articles, when all in the office were much exercised in our minds by the discovery that from a locked drawer in one of the desks various small sums of petty cash had at different times been abstracted. We could not imagine in what way or by whom they had been stolen; but they were always taken between closing the office at night and the following morning. The woman who attended to the cleaning and lighting the fires was of known probity and quite above suspicion, and for some time we could make nothing of the mystery. At last I determined by some means or other to find out who the thief was.

I took no one into my confidence, but contrived for several evenings to remain behind at the office after it was closed; and I shut myself up in a large closet in the corner, having made a peep-hole through which I had a full view of the petty cash drawer. There I stayed from six o'clock till ten for three consecutive evenings without any result; very uncomfortable and tiring were my watches in that closet, for it was dark, and I dare not have a light. On the fourth night, however, just before ten o'clock, and as I was about to leave my hiding-place, I heard a slight sound on the cellar steps, and in another minute there came through the office door a little bit of a boy, perhaps twelve years old, and of a countenance the saddest I ever saw in one so young. To judge from that and from the rags upon his back he seemed to be steeped in poverty and misery. I watched him eagerly. From out of his pockets he produced a bit of candle and a match; lighted the candle and went up to the drawer, which he readily opened with a skeleton key; he was just about to help himself to some of the money when I thought it would be in the interests of justice to give him a good fright. I had a pea-shooter and some peas in the closet, which had been left there by the office boy, so through my peep-hole I sent a pea with all my force at the stretched-out hand, at the same time crying out in a sepulchral voice—

"Thieving rascal, thou shalt die."

I never saw such terror depicted on the human countenance before or since: the little thief literally shook in his shoes, and I felt really sorry for him, but I was determined to give him another lesson, so I took off my coat, and coming quietly out of the closet, got behind him before he was aware of my presence, and putting my coat over his head and completely blinding him, I repeated for five minutes all the ghostly and horrible incantations I could think of or invent. So great was now the lad's terror that he

swooned, and it was with great difficulty I brought him to his senses. He then confessed to me that his father being dead, and his mother in a state of the most abject poverty, he had been driven to steal to keep the family from dying of starvation, and having one day helped to get some coals into the office, he had discovered a way of getting into the cellar though the coal-hole, and had been robbing us from time to time in the way I have described. I found the lad was not intrinsically bad, and taking him out with me, I made him come with me to the den where he and his mother lived. I cannot describe what I saw. Suffice it to say that I forgave the lad all his evil doings, and promised to see what could be done for him and his mother; and that next day, through Mr. Barker's instrumentality, a better habitation and suitable employment were found for both of them, and the fright I gave the lad on that well-remembered evening no doubt saved him from a career which would not improbably have ended on the gallows.

Another incident of some interest in itself, and full of useful lessons in our profession, occurred in Mr. Barker's business about this time. A young and wealthy client was about to marry a very beautiful girl. She had no money, and he was making large settlements upon her. I recollect well the anxiety and trouble the drawing of some of the deeds cast upon me. This gentleman was many times at our office, and he was always brimming over with cheerfulness and good-humour, with a ready joke for us clerks, if he had to wait for a few minutes while Mr. Barker was engaged. Just two days before the time fixed for the wedding, he called—but oh! what a change had come over him!—he had suddenly grown quite old, and was so pale and haggard as to be hardly recognizable. After he was gone, the settlements were put together and locked up; and that poor fellow's body was the same evening found in the canal without a vestige of life in it. The jury brought in the usual verdict, and the beautiful girl who was so soon to have become a bride, fell into a consumption, and did not long survive her lover.

A not uncommon tale you will say; no doubt but in this case the interest consists in the facts I have related being *absolutely true*, and in the *cause* of all this misery. Well, the cause of it was this: *Our client was a trustee*, and he had allowed his co-trustee, a man of high position, and (as was supposed) of the strictest honour, to have the management of the large funds belonging to the trust. This scoundrel appropriated the money, speculated heavily with it, and lost every penny. It is the law, and I suppose it is right, that the innocent co-trustee should make up losses of this kind—and our poor client did make up the money, but it was absolute ruin to him; and the sudden breaking up of all his hopes was more than his brain could bear, and the dreadful result we know. I do think the law which ruined this poor man is a hard one. It is true the loss came about through the confidence placed by him in his co-trustee; but, dealing with a man standing high in character and position, was it not likely that he should trust him? How was he to say anything which should seem to throw a breath of suspicion upon so eminently respectable a personage? And yet the danger is so real, so great, and of such frequent recurrence, that no one should be a trustee who is squeamish or thin-skinned. Indeed, I would say, if I could, let no wise man accept a trusteeship. This is, however, impossible; we must, at any rate, do for others what we are constantly expecting them to do for us. But I can take this opportunity of giving my readers a few words of sound advice on the subject, the following of which will save them from many a trouble. Never accept a trusteeship unless you are yourself to have the control and management and the personal possession of the securities; take care that those securities are in strict conformity with your will or trust deed; on no account whatever listen to the demands or entreaties of your *cestui que trusts* to change the investments for others of an unauthorized description; keep the strictest and most careful accounts, and take regular and full receipts for all payments of every description made by you; in all cases of loans on mortgage not only be fortified by a proper valuation by some competent valuer in no way connected with the borrower, but yourself be satisfied, by inspection if possible, but, at any rate, by careful inquiry, that the security is unexceptionable. Bear this constantly in your mind, that some day or other you will in all probability be called upon to give a strict account of your trusteeship; that you may be obliged to vouch every item of such account; that you may be harassed by legal proceedings for negligence, real or imaginary; and that, under the best of circumstances, you must expect no gratitude for anything you do, and are certain to have any amount of worry, annoyance and abuse, and probably actual pecuniary loss, in carrying out your trusteeship. I am afraid I have wandered from my subject, but the sad fate of Mr. Barker's client

gave me an early lesson which has since stood me in good stead, and which my young readers cannot too soon learn for themselves.

PEDIGREE.

Never yet have we heard of a layman thoroughly appreciating the subtleties and intricacies of the law of evidence; one who fully valued the importance of those common discussions between bench and bar as to admissibility of certain evidence tendered. Usually the intelligent layman scornfully sneers that the rules of evidence may be law, but most certainly they are not common sense, and, for his part, he cannot understand why the evidence should not be allowed and taken for what it is worth: our intelligent layman entirely forgets that evidence once produced cannot but have its effect upon the equally intelligent juryman, an effect which will be scarcely, if at all, minimised by the careful direction of the judge that legally they should not allow themselves to be influenced by such evidence, as, according to the accepted rules, it is not admissible. Lawyers, more than any other class of men, know only too well the truth of the proverb "All men are liars;" this axiom forms almost the key-note of their rules and doctrines as to evidence; storm and rant against these rules and doctrines as they may, laymen still must take to heart that they alone are responsible for their existence: if all men were not liars, we should need no oaths, no rules of evidence, no cross-examination.

These few preliminary observations have been suggested by the thought how hopeless it would be to endeavour to instil into the average layman's mind the correctness, soundness, and, we may even say, necessity of the recent decision in *Haines* v. *Guthrie*, as to the admissibility of hearsay evidence.

It is generally well known that the law declines to admit hearsay evidence, or, in other words, statements made out of Court by persons not parties to the action. By the word "statements" are intended not only verbal assertions, but matters reduced into writing. Now, for this objection to hearsay evidence, the law has two good sound substantial reasons, albeit not flattering to the general public. Firstly, say our judges, such statements are not made on oath, and are, therefore, not entitled to the same credibility as though made on oath. Secondly, more important, and from this recent decision it seems still more fatal, objection, the party against whom these statements are tendered, had no opportunity of cross-examining the person making such statement; this last and second objection appears to us now, as we shall hope to show, the stronger of the two reasons.

Now, although this is the general rule, it became very early evident to the Bench that some exceptions must be made; thus, in course of time the following exceptions to this strict rule of evidence were permitted: firstly, when such evidence formed part of the *res gestæ;* secondly, when the statement was made either in the discharge of duty or in the course of business, or was against the interest of the person making it, and in either case the person making the statement was dead; thirdly, when the plaintiff or defendant was present when the statement was made; fourthly, and lastly, in questions of pedigree, custom or boundary.

It will readily be understood from the title of the article that our present remarks will be confined entirely to one of these exceptions, that made in favour of the admission of hearsay evidence in pedigree questions.

It appears that, in 1777, Lord Mansfield was the first to recognize that in questions of this kind tradition must be admitted; that entries in family Bibles, inscriptions on tombstones, pedigrees hung up in the family mansions, may all be admitted in evidence, as well as statements made by parents: the reason of the relaxation of the rule on this point is not hard to find, as stated in *Vowles* v. *Miller* (13 Ves. 140) it would be impossible to establish descents in any other way, so that the Court is compelled to accept "the best the nature of the subject will admit of," the only qualification being that laid down by Lord Ellenborough in *Whitelocke* v. *Baker* (13 Ves. 311), that such statements must be made by persons having some connection with the family. We do not propose to follow up the point whether hearsay evidence as to age is admissible in pedigree cases; modern opinions have decided in favour of its admission, the decisions leading to this statement of the law are not therefore for the moment of importance.

Such, then, is the law as to the admissibility of hearsay evidence in pedigree questions. We shall now see how strictly the Courts have curtailed its application by the decision in *Haines* v. *Guthrie*. The facts are simple; defendant purchased several horses; sued for the price, he pleaded

infancy; in proof he tendered in evidence an affidavit made by his father in an administration action to which the plaintiff was not a party, showing that defendant was born on or about a certain date, and was consequently a minor. At the trial, this affidavit was admitted by the judge; on appeal, both the Divisional Court and the Lord Justices unanimously decided that such affidavit was strictly hearsay evidence, and had been improperly admitted.

At first sight, we willingly admit such a decision appears hypercritical: the objection to hearsay evidence is, that it is not made on oath, but here we have an affidavit on oath; true, but it is still a statement made out of Court by a person not a party to the action, and the other and still more fatal objection exists, the person against whom the statement was made had no opportunity of cross-examining the person making the statement.

Independently, however, of this objection, there yet remains the still stronger argument in support of the judgments; the case does not at all fall within the exception: it is not a pedigree case. The endeavour to prove a certain person dead, or born on a certain day, or married, is not a question of pedigree. In the words of Lord Justice Fry, it is wholly immaterial in such cases "whose son the man is, or who his relations are, or, in fact, any question at all about his family." It is not, therefore, a question of pedigree, and that being so, the evidence was rightly excluded. Two strong opinions of eminent judges already exist, that in an action for goods sold and delivered, declarations of a deceased parent are not admissible to prove the defendant is an infant: these strong opinions may now be formulated since this decision into the rule that hearsay evidence is not admissible to prove, in action for goods sold and delivered, the age of the defendant: further, the rule as to the admissibility of hearsay evidence in pedigree cases is qualified; such evidence must be strictly confined to the pedigree, and will not be allowed to prove such facts as births, deaths or marriages, which, in reality, make up a pedigree, when they have to be proved for any other purposes.

As to the legal correctness of the decision, we should think there can be little doubt; it would be satisfactory to have so important a point definitively settled by the House of Lords; we have, however, in the judgments of the two Courts, the unanimous opinions of five judges,—with that we may certainly rest content. It would be, however, difficult to persuade our intelligent layman that the strict interpretation of the rule is not only correct but advisable; hearsay evidence is at best but dubious stuff; stories are so mangled in the telling that the Courts may well be pardoned for a tendency to limit the rule somewhat strictly. In many cases, as the Master of the Rolls said, "there might be much to be said on both sides, if it were sought to establish an exception for the first time;" to this we raise no dissentient voice; but what did his Lordship mean by saying "that it is not the province of the Court to consider whether the original rule is good or bad, nor to enumerate the principles of the exception, but only to see what they are." Are we then at the present time so bound down by precedent that we are compelled to follow a bad rule? surely the Master of the Rolls cannot have intended to convey such a meaning: we always thought that the law was the essence of all goodness, and that such a thing as bad law did not exist. Are the nineteenth century judges too case-awed to follow the example of their sturdy predecessors, who did not hesitate to roundly declare that such and such a rule to which they objected was not even bad law: for there can be no such—law being the essence of all goodness: it was, said they, simply "not law at all."

SECRET TRUSTS.

The facts in a recent case (*In re Boyes*, *Boyes* v. *Carritt*, 53 L. J., Ch. 654) afford us an opportunity of endeavouring to explain the law of secret trusts—a subject which, as we know from experience, causes a good deal of difficulty to students.

George Edmond Boyes, being about to go abroad, by his will, dated June 1st, 1880, gave all his property to his solicitor, Mr. Carritt, and appointed him executor of his will. The testator went abroad, and remained there till his death in 1882. He left personal property only, and probate of the will was granted to Carritt. Hereupon the next of kin of Boyes took proceedings in the Probate Court to recall the probate, but the proceedings were stayed and the validity of the will was admitted by the next of kin on Carritt's admission that it was his belief that the testator had intended that he (Carritt) should be trustee only of the property given him by the will, and that the testator had told him he would immediately, on arrival abroad, give him by letter directions concerning the pro-

perty. No such directions ever reached Carritt in the testator's lifetime; but at his death two letters addressed to Carritt were found among the deceased's papers, neither of which were attested as a codicil, and the purpose of both was that Carritt was to have 25*l.* only, and the rest of the property was to be held for one Nell Brown, who had gone abroad with the testator. The probate proceedings having terminated with Carritt's admission that he was only intended to hold the property as trustee, the next question to be determined was whether he held as trustee for Nell Brown, the real object of the testator's bounty, or for the testator's next of kin?

To settle this question, the action *Boyes* v. *Carritt* was brought by the testator's next of kin, who sought for a declaration that Carritt was a trustee for them. Mrs. Brown (Nell Brown) was not originally a party to the action, but she was subsequently added by order of the Court, and was duly represented by counsel when the case came on for hearing.

The property at law belonged to Carritt—it had been given to him absolutely by a duly executed will, which had not been revoked, or in any way altered by a duly executed codicil. But in equity, as, according to Carritt's own admission, the property had only been given to him on his promise to dispose of it as the testator might direct, he could claim no beneficial interest in the property, but must hold it as trustee. But for whom? Earlier cases show that if at the time the will was made the nature and object of the trust had been declared and accepted by the devisee or legatee of the property, the Court would compel performance of the trust, if lawful, for the benefit of the person designated; indeed, the cases go farther than this, for they show that even though the nature and object were not communicated at the time the will was made, yet if they were subsequently communicated to the devisee or legatee, and he accepted the particular trust, the Court would, if the trust was lawful, see that he carried it out, and this though the subsequent communication was by a writing not attested as required by the Wills Act, or was even made verbally. So that had the testator, Boyes, at the time of making his will told Carritt that the person in whose favour he wished him to dispose of the property was Nell Brown, or had he told him so verbally or by letter, after the will was made, but before his death, and Carritt had agreed to hold the property, a secret and enforceable trust in favour of Nell Brown would have been created. But unfortunately for Mrs. Brown the testator did not follow either of these recognized plans, though, no doubt, from the evidence of Carritt, he intended to do so. The letters indicating Nell Brown as the object of his bounty did not reach Carritt till after the testator's death; he never had an opportunity of saying whether or not he would accept the trust imposed upon him. Counsel for Mrs. Brown argued that this could make no difference—the trust was complete, the object and subject were defined, and the trust had been accepted—the mere fact that it was not communicated to the trustee before the testator's death could make no difference; while counsel for the next of kin urged, that if Mrs. Brown was held entitled the Wills Act was practically repealed—how could the conscience of the trustee be bound if he knew nothing of the trust? Communications made after the death of the testator are open to the objection that the interests of the next of kin are vested, and the testator has ceased to be the owner of the property. How is the conscience of the trustee fixed here?

Mr. Justice Kay, after taking time to consider his judgment, held that Carritt was a trustee for the next of kin. In order that a secret trust in favour of Mrs. Brown as against the next of kin might be created, the testator ought to have communicated the object of the trust to Carritt in his lifetime, though possibly it would have been sufficient if the trust had been put into writing and placed in a sealed envelope in Carritt's name, and he had engaged that he would hold the property given to him by the will upon the trusts so declared, although he did not know the actual terms of the trust, for the reason that if he had not so accepted, the will would be revoked. But in the case of an engagement to hold the property upon the terms of any paper which might be found at the testator's death (and in this case there was not even evidence of that), the rule of law which prevents a testator from declaring trusts in such a manner by a paper not executed as a will or codicil, would intervene. A devisee or legatee cannot by accepting an indefinite trust enable the testator to make an unattested codicil.

It will be observed that the fact that Carritt was intended to hold the property as trustee was gathered from his own admission. Had he not been candid and honest there might have been difficulty in proving that a trust was intended, and in the absence of such proof Carritt would have been entitled to the property beneficially. To

stop all chance of the intended trustee taking the property beneficially, it often happens that testators in their will state that the property is given to a legatee or devisee on trusts to be declared. Where this is so no effect can be given to the subsequently declared trust, even though accepted by the trustee, unless it is declared by an instrument duly signed and attested as required by the Wills Act, and if otherwise declared the trustee could hold the property for the real or personal representatives of the testator. Whereas, as we have seen, if the trust is not referred to at all in the will, the subsequent declaration of the object and nature of the trust can be by an unattested instrument, or even by a verbal communication.

If the secret trust involves some unlawful object —*e. g.* the giving of lands to charities contrary to the Mortmain Act—the trust fails, and the trustee holds the property for the testator's representatives.

It will be seen from what has been stated that the Court will, when it can, enforce secret trusts so as to give effect to the settlor's intentions; but where this cannot be done, owing to the object of the trust being unlawful, or the objects and nature of the trust being declared by an instrument to which, owing to the provisions of the Wills Act, effect cannot be given, the devisee or legatee is not allowed to keep the property free from the trust, but he becomes a trustee for the testator's real or personal representatives, for if it were otherwise a fraud would be perpetrated.

In conclusion, we heartily join in the hope expressed by Kay, J., in *Boyes* v. *Carritt*, that the next of kin, to whom by a stroke of good luck the personalty of Boyes passed, will consider the claim which Mrs. Brown has upon their generosity.

SOME POINTS ON ANNUITIES.

In the ordinary acceptance of the term an annuity is a yearly sum received by some person who is called the annuitant; and in the lay mind it is generally conceived of as a mode by which a testator benefits some legatee in preference to giving him a lump sum. It is, of course, distinguished by all from interest accruing on money lent or laid out in some investment; but for the lawyer it is necessary to have a more accurate idea as to what an annuity is than that which the general body of the people have. An annuity is indeed a sum payable annually, but so is a rent-charge: and a distinction must be made between these two. An annuity, then, in law is a yearly sum (not payable as interest), chargeable only on the person or personal estate of the grantor: while a rent-charge is a similar yearly sum chargeable only on the real estate of the grantor. Thus, if a man grants an annuity, and has no personal estate but has real estate, the annuitant (except when it becomes a question of marshalling assets) will not be able to have recourse to the real estate for payment of the annuity; and conversely, if he grant a rent-charge and have no real estate the annuitant will not be allowed to look to the personal estate for payment, unless there is a personal covenant to pay the rent.

Again, the popular notion of an annuity is that it is a sum given for life only, and that on the annuitant's death the sum ceases to be payable. This is, no doubt, the case with the majority of annuities, but there is nothing in law to prevent a person from conferring a benefit in the shape of an annuity not on the beneficiary named merely, but on his heirs generally, or the heirs of his body. For though, as a rule, the term *fee simple* has no application to personal property, yet a testator can limit an annuity to a person and his heirs in fee simple: and on the death of the annuitant the sum payable will, if he has not alienated it, devolve on his heir in a manner analogous to the descent of real property. With regard, however, to an annuity given to a man and the heirs of his body, it should be noticed that such a limitation does not give the annuitant an interest in the sum corresponding to that which he would acquire from a grant in similar terms of real estate: and thus, for example, he would have no power to bar the entail and acquire fee simple interest, for the De Donis and Fines and Recoveries Acts have no application in this case. The annuitant does not take an interest in fee tail, but one which corresponds to the old *conditional fee simple* estate in real property, which was to be met with before the De Donis Statute. In effect then he takes an interest which will become absolute on the birth of issue, and on such birth he has full power to dispose of the annuity, which when disposed of will become to all intents and purposes a perpetual annuity. But should he not dispose of it, the annuity will be payable to the heirs of his body if he has any, and if he has none will fall back again into the estate of the grantor.

As a general rule, a gift of an annuity without any words of limitation imports only an annual

sum for the life of the donee. (*Savery* v. *Dyer*, 1 Amb. 140; *Yates* v. *Madden*, 3 McN. & G. 532.) But this general rule must in some cases be taken with a qualification. Now one of the most usual ways of limiting an annuity is for the grantor to set aside a certain sum, and to direct it to be laid out in purchase of an annuity for some person or other. In such a case that person will be entitled to a perpetual annuity. For, as it was held in *Stokes* v. *Heron* (12 Cl. & Fin. 161), the setting aside in such a manner of a fund for the purchase of the annuity amounts to an absolute dedication of that fund to the annuitant. It would result then, supposing such a direction to have been made in a will, that the annuitant would take a perpetual annuity, and the annuity would not fail even if the annuitant died immediately after the testator, and before any instalment of it had been paid.

There are other cases, too, in which the gift of an annuity without words of limitation has been held to confer a perpetual annuity. We give two instances of such cases.

1. A testator gives an annuity to A. for life, and after his death to B. Here, unless there occurs in the will the expression of an intention that B. is to take no larger interest than a life interest, B. will take a perpetual annuity: for it amounts to a gift to him of the principal which would produce the annuity. (*Vide Bent* v. *Cullen*, L. R., 6 Ch. 235.)

2. A testator gives an annuity to A. and B. for their lives, and after their decease to their children, and he directs that if A. and B. die without issue the annuity shall cease and fall into the residue of his estate: but he is silent as to what is to become of the annuity in case of A. and B. leaving issue and that issue dying. In this case the issue take perpetual annuities. (*Hedges* v. *Harpur*, 3 D. & J. 129.)

It should be remembered, however, that if a testator wishes to give a perpetual annuity he should add words to that effect, so as to negative the rule that a gift of an annuity simply is a gift thereof for the life of the annuitant only: for sect. 28 of 1 Vict. c. 26 will not apply in these cases to pass a larger interest than that strictly named. (*Vide Yates* v. *Madden*, *supra*.)

There are two further points relating to annuities which are worth consideration.

The first of these is:—When has the annuitant the right to elect to take the price or value of the annuity instead of the annual payment? The rule is that when a testator directs an annuity to be purchased for a beneficiary the annuitant takes a vested interest in the price or value of it, immediately upon the testator's death. So that if he dies even within an hour after the testator, his vested right to the price has accrued, and his personal representatives have a legal right to claim it. And this is the case even if the annuity is by the directions contained in the will not to be purchased till some time after the testator's decease (vide *Dawson* v. *Hearn*, 1 R. & M. 606; *Yates* v. *Compton*, 2 P. W. 308). The ground on which this rule rests is, that the testator has evinced an intention that the annuitant shall have the benefit of the sum directed to be laid out in the annuity; and that, as the annuitant takes a vested interest and could sell the annuity, and thus convert it again into a lump sum immediately on the testator's death, it would be useless to enforce the strict purchase of the annuity: the maxim of the Court being that the Court will do nothing in vain. The Courts have, however, gone rather far in this direction; and have held that the right of the annuitant to take the price of the annuity will not be excluded even by an express declaration in the will that he shall not be allowed to have the value of the annuity in lieu thereof (vide *Hunt-Foulston* v. *Furber*, L. R., 3 Ch. D. 285; *Stokes* v. *Cheek*, 28 Beav. 598). In the first-mentioned case V.-C. Hall said: "Where a testator makes an absolute gift by will he cannot take it away in a subsequent part of the will unless he uses clear and distinct language to that effect. No doubt there was an intention to prevent the annuitant from selling the annuity, and also an attempt to make the fund form part of the residuary estate; but there being a previously absolute gift, the latter intention is inconsistent with the gift itself."

If the testator wishes to exclude the annuitant from any claim to the price of the annuity in lieu of the annuity itself, he should so limit it as to make it determinable on alienation or anticipation.

A second point is when is an annuity a charge on the corpus of a fund? This question arises when a testator, in giving an annuity of a certain amount, directs a certain sum to be treated as a fund which by its income is to produce that annuity, and it happens that the annual income of the fund falls short of the amount of the annuity. Is the annuitant in such a case entitled to have the deficiency made up out of the *corpus* or *capital* of the fund? The answer to this question will

depend on the intention of the testator, so far as it can be made out from a construction of the expressions in his will. The following rules may be laid down on this point.

1. Words in the will merely expressing an intention that the annuity is to be paid out of the income will not prevent the annuitant, in case of a deficient amount of income, requiring the deficiency to be made out of the *corpus*.

2. But if the words, in addition to the above, negative an intention that the annuity should be paid out of the *corpus*, in this case there can be no claim against the *corpus* in event of a deficiency of income.

3. Suppose that there are no actual expressions of intention as to whether the income is to be looked to solely, or whether the *corpus* is to be left entire. In such a case the whole will must be looked at to discover whether there are any indications if

(a) the testator intended that the annuity fund should in every event continue entire during the life of the annuitant, or if

(b) he intended that the annuitant should take the full amount of the annuity in any event.

In case (a) this intention will be assumed when the annuity fund is limited over to any person after the annuity ceases to become payable. Thus suppose a testator directs an annuity of 100*l.* to be paid to A. and the sum of 2,000*l.* to be invested for the purpose of producing the income, and further directs that on the death of A. the sum of 2,000*l.* shall be paid to B.; suppose, again, that the 2,000*l.*, though invested as the testator directs, will not produce an income equal to 100*l.* a year: is A. entitled to have the deficiency made good out of the fund of 2,000*l.*? In this case he would not, for the intention of the testator, as manifested from the terms of the will, evidently is that the sum of 2,000*l.* shall remain intact and upon A.'s death he paid to B. in its full amount (vide *Baker* v. *Baker*, 6 H. L. C. 616).

But supposing that the testator, instead of making a gift over of the annuity fund on A.'s death to any specific person, merely directs that the 2,000*l.* shall fall into the residue and go to his residuary legatee. Here, under the above circumstance, the case would be different, and A. would be entitled to have the deficiency made good out of the capital. For there is a difference between a specific legatee and a mere residuary legatee. In the case of B., a specific legatee, the testator's intention is that B. shall take the fund of 2,000*l.* in its integrity, so that the inference is that he does not intend A. to have any power to meddle with the *corpus;* but a residuary legatee is not entitled to any specific sum of 2,000*l.*, but only to such sum as may be left over after all the specific benefits conferred by his will have been fully realized: so that in this case no intention can be argued from the testator's directions that A. was not to have recourse to the annuity fund in case of a deficiency (vide *Wright* v. *Callender*, 2 D. M. & G. 652).

(b) As to cases in which an inference may be deduced that the testator intended the annuitant to take the full amount of the annuity in any event, the following may be taken as examples. This inference will be drawn when the testator directs the investment of so much money as would produce a certain annual sum (vide *Wright* v. *Callender*, *supra*), or where he directs that not only the interest of the fund, but the fund itself is to be held in trust to pay the annuity. (*Hickman* v. *Upsall*, 2 L. T., N. S. 80.)

In a recent case (*Potter* v. *Potter*, 50 L. T., N. S. 8), it was held, that where property was given to a son absolutely, subject to the payment of an annuity, the annuitant was not entitled, so long as it was paid, to have the property sold.

In connection with annuities it should be remembered that (unless they are created by marriage settlement or by will) they should be registered, otherwise they will not affect any lands of the donor as against a purchaser or mortgagee or creditor of his who has no notice of the annuity. (18 Vict. c. 15, s. 12, and see *Greaves* v. *Topfield*, L. R., 14 Ch. D. 563, hereon.)

BANKRUPTCY.

By Robt. McLean, Esq., Solicitor.

XIII.

Realization of Bankrupt's Property.

We have seen (Law Notes, Vol. III., p. 83) that it is the trustee's duty, as soon as may be, to take possession of the bankrupt's property, and have discussed the powers given to him to enable him to realize it. If he experiences any difficulty in getting possession of the property, he may apply to the Court for a warrant, which will enable him to seize it if in the hands of the bankrupt or any other person, and empower him to break open any house, building, or room *of the bankrupt*, where the bankrupt is supposed to be, or any

building or receptacle *of the bankrupt*, where any of his property is supposed to be. Moreover, the Court, when satisfied that there is reason to believe that any of the bankrupt's property is concealed in a house or place not belonging to him, may grant a search warrant to a constable or officer of the Court, who may execute it according to its tenor. (Sect. 51.)

The property vests in the trustee immediately (or official receiver for the trustee) on the debtor being adjudged bankrupt, and passes from trustee to trustee without any conveyance, assignment or transfer. (Sect. 54.)

As to his powers to deal with the property, and as to when the concurrence of the committee of inspection, or of the creditors as a body, is necessary, we have already spoken. (Law Notes, Vol. III., pp. 117, 118.)

When a trustee brings an action to recover any of the bankrupt's property, he sues by the official name of "The Trustee of the Property of , a Bankrupt." (Sect. 83.) Rule 91 requires him to bring the action in the Bankruptcy Division of the High Court, except it be an action of a kind specially assigned by the Judicature Acts or Rules to some particular other division. Sects. 113 and 114 repeal sects. 105 and 112 of the Act of 1869, and provide (1) where a member of a partnership is adjudged bankrupt, the Court may authorize the trustee to bring an action in the names of the trustee and the bankrupt's partner: and then the partner may not release the debt, the subject of such action. But the trustee must give notice of his application for authority to so commence an action, and the partner may show cause against it, and the Court may direct that he shall receive his proper share of the proceeds, and, if he claims no benefit therefrom, that he shall be indemnified against the costs. Note that the consent of the creditors to the application is not now necessary, as it was under the Act of 1869. (2) Where the bankrupt is a contractor in respect of any contract jointly with any other person, that other person may sue without joining the bankrupt.

Distribution of Bankrupt's Property.

The trustee need not realize all the bankrupt's property prior to making a distribution of it, but may declare dividends from time to time. But before distributing a general dividend, the trustee must discharge certain liabilities, which come under the denomination of

Preferential Debts.

These comprise (1) rates and taxes; (2) certain wages and salaries; (3) certain apprenticeship claims; (4) landlord's claim for rent in certain cases.

(1) *Rates and Taxes.*—Sect. 40 provides that there shall be paid in priority to all other debts all parochial or other local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before such time, and all assessed taxes, land tax, property or income tax, assessed on him up to the 5th day of April next before the date of the receiving order, and not exceeding in the whole one year's assessment.

This is substantially a repetition of part of sect. 32 of the Act of 1869, save that the "date of the receiving order" is substituted for the "date of the order of adjudication."

(2) *Wages.*—The wages to be paid in preference to other debts are (a) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding 50*l.*; and (b) all wages of any labourer or workman, not exceding 50*l.*, whether payable for time or piecework, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

This provision differs from that of sect. 32 of the Act of 1869. Under that Act a clerk or labourer could sustain a preferential claim only when he had been in the bankrupt's employment up to the date of the adjudication order. It is not now necessary that he should be in the bankrupt's employment up to any specific time, but the services claimed for must, of course, have been rendered during the four months preceding the date of the receiving order. Again, under the Act of 1869, a labourer's preferential claim only extended to two months' wages, while under the present Act he can claim to be preferred to the sum of 50*l.*, without any limit as to the extent in point of time of the services, except, as above, they must have been rendered within the four months preceding the receiving order.

(It may be here noted that where the bankrupt is a beneficed clergyman and his benefice is sequestrated, any duly licensed curate is entitled to be paid by the sequestrator out of the profits of the benefice for duties performed by him during four months before the receiving order, not exceeding 50*l.* Vide sect. 52, sub-sect. 3.)

With reference to preferential debts classed 1 and 2 above, sect. 40, sub-sect. 2, provides that they shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) *Apprenticeship Claims.*—Sect. 41, repeating sect. 33 of the Act of 1869, provides as follows:

1. Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or on some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.
2. Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

(4) *Landlord's Claim for Rent.*—The landlord of a bankrupt stands in a different position from the ordinary class of creditors by virtue of the remedy he has to recover his debt under his power to distrain on the demised premises for the rent in arrear.

There is nothing in the common law which renders the bankruptcy of his tenant an obstacle to his distraining; the effect of the bankruptcy statutes is to curtail his right to distrain in certain cases, and the provisions of the statutes on the point only apply to arrears of rent due *before the bankruptcy*. His right to distrain for rent becoming due afterwards is not limited.

Sect. 42 of the present Act is to the same effect as sect. 34 of the Act of 1869, and provides that for arrears of rent due from the bankrupt the landlord (or other person to whom any rent is due from the bankrupt) may distrain either

(a) Before the commencement of the bankruptcy, in which case he may distrain for *all* arrears; or
(b) After the commencement of the bankruptcy, in which case he can only levy the distress for one year's rent accrued due prior to the date of the adjudication order. For arrears beyond that period he must prove against the estate like an ordinary creditor.

As to the "commencement of the bankruptcy," it will be remembered that sect. 43 provides that it commences at the time of the act of bankruptcy on which the receiving order is made, or to the first of a series of such acts proved to have been committed within three months prior to the presentation of the petition.

Distribution of Property and Dividends.

The preferential debts having been discharged, all debts proved in the bankruptcy are to be paid *pari passu* (sect. 40, sub-sect. 4). If there is any surplus after payment of the debts it is to be applied in paying interest on them at the rate of 4*l.* per cent. from the date of the receiving order (sect. 40, sub-sect. 5). Note that *all* debts now bear interest *pari passu* in this case, and those debts which *by law* are entitled to bear interest (as was the case under the Act of 1869, vide rule 137) are not entitled to receive interest in preference to ordinary debts.

In distributing the property the trustee must bear certain points in mind. For instance, he must remember that 28 & 29 Vict. c. 86, s. 5, is unaffected by the Act (sect. 40, sub-sect. 6), and a man who makes a loan under the circumstances detailed under that Act, though he is not constituted a partner, is not entitled to receive a dividend on the money he has so lent till the claim of the other creditors have been satisfied. Again, under sect. 3 of the Married Women's Property Act, 1882, when a wife has lent any of her money to her husband for the purpose of any trade carried on by him or otherwise, it is to be treated as assets of the husband, and the wife can only claim a dividend from his estate after all claims of the

other creditors for money or money's worth have been satisfied. These may be aptly called *deferred* debts. Again, if there is a debt which he thinks incapable of being fairly estimated, the trustee may apply to the Court, and the Court has power to order that the debt be deemed one not provable in bankruptcy, and in this case the creditor will have no claim to a dividend (Vide sect. 37, sub-sect. 6.) The trustee must also bear in mind the provisions of sect. 38 as to mutual credits and set-off. This section provides that where there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and a creditor, an account is to be taken of what is due from the one to the other in respect of such dealings, and the sum due from the one party is to be set off against any sum due from the other party, and the balance of account and no more will be claimable.

If it is a case of the bankruptcy of partners, the trustee must refer to sect. 40, sub-sect. 3, which provides that in such a case the joint estate shall be applicable, in the first instance, in payment of the joint debts, and the separate estate of each partner in payment of his separate debts: and that if there is a surplus of the separate estate it is to be dealt with as part of the joint estate, while if there is a surplus of the joint estate it is to be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. The trustee, further, has power, with the consent of the committee of inspection, to divide in its existing form among the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold. (Sect. 57, sub-sect. 9.) Should there be any surplus after the creditors have been paid in full with interest, and after all the costs of the proceedings have been discharged, this the trustee will pay over to the bankrupt. (Sect. 65.) We must now consider the provisions of the Act as to—

The Declaration of a Dividend.

On this point sect. 58 provides:

1. Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

2. The first dividend, if any, shall be declared and distributed *within four months*, after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

3. Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

4. Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

5. When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Note, that a precise time is now fixed for the declaration of the first dividend. Under the Act of 1869 (sect. 41), the trustee was only required to declare dividends when the committee of inspection determined; if, however, he declared no dividend for six months, he had to explain the cause thereof to the creditors.

As to the notice to be given before declaring a dividend, Rule 175 provides, it must be given not more than two months, and not less than twenty-one days, beforehand, to the Board of Trade (in order that it may be gazetted), and to the creditors mentioned in the bankrupt's statement who have not proved their debts: and the notice is to specify the latest date within which proof shall be lodged, which shall not be less than seven days from the date of the notice. Immediately after that latest date, the trustee is to examine, and in writing admit or reject any proof which he has not previously admitted or rejected, and give notice to the creditor of his decision. Provisions then follow requiring a creditor who proposes to appeal against the trustee's decision to do so, and give notice to the trustee within seven days from the date of the notice of the trustee's decision; and the trustee is in such case required to make provision for the dividend upon such proof, and the probable costs of the appeal in the event of the proof being admitted. Where no appeal is commenced within the specified time, the trustee is to exclude all proofs rejected from participation in the dividend. Then, immediately on the expiration of the time for appeal, he must declare the dividend, and give notice to the Board of

Trade (that the same may be gazetted), and also to each creditor whose proof has been admitted, accompanied by a statement showing the position of the estate. Holders of bills of exchange, promissory notes, and negotiable instruments, generally, must as a rule produce them to the trustee before they can obtain payment of the dividend, and the amount of the dividend paid must be indorsed on the instrument. The trustee may remit the dividend by post at the request and risk of the creditor.

Sect. 60 requires the trustee to pay attention to claims of creditors who reside at a distance, and enacts that in the calculation and distribution of a dividend he shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where he is acting, that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand. This clause is a repetition of sect. 42 of the Act of 1869; sect. 61 repeats the provisions of sect. 43 of the Act of 1869, in favour of a creditor who has not proved before a declaration of a dividend. It runs as follows:—Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

In declaring a dividend in the bankruptcy of one partner of a firm, the trustee must remember, that by sect. 59, sub-sect. 1, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts; and where he is administering the estate of both the partners as a body, and of each partner separately, the dividends of the joint and separate properties shall, subject to any order to the contrary made by the Court, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

These provisions correspond to those made by sects. 103 and 104 of the Act of 1869. As under the Act of 1869 (sect. 46), so under the present Act, no action lies against the trustee who refuses to pay a dividend; but the Court may order him to pay it, and pay interest on it and costs out of his own pocket. (Sect. 63.)

The trustee will, of course, declare dividends from time to time according as the assets come in from the realization of the estate. But sooner or later the time for declaring a final dividend will arrive. On this point sect. 62 provides that when the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the trusteeship, he shall declare a final dividend; but before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited (or if the Court, on application by any such claimant, grant him further time for establishing his claim, then, on the expiration of such further time), the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

The final dividend distributed, and the surplus, if any, paid to the bankrupt, the trustee's duties are at an end, and he may apply for his release. Of the means by which he obtains this release we have already spoken. (Law Notes, Vol. III., p. 120.)

We will in our next article turn our attention to the debtor, and see what provisions the Act makes for his discharge, and for his punishment in cases where the legislature thinks he deserves it.

(*To be continued.*)

NOTES ON THE FINAL.

The result of the Pass Examination of last month being made known too late for us to incorporate it in this Number, in order not to disappoint our readers we have inserted a slip with the names of the successful Candidates. The list will be repeated in small type in our March Number, in order that a record of the result may be secured by our subscribers.

While bestowing by no means unqualified praise on the questions of the Final (Pass) Examination of last month—for a good many of them were to our mind but indifferently framed—we think that they were, on the whole, fair, and likely to find out what work the candidates had done.

Our answers to the questions were published the morning after the Examination, and sent off to our subscribers, with the Intermediate and Honors answers, early in the week following the Examination.

We misread Question 35, and answered it as if the trustees had an absolute *trust for sale*, and not, as was the case, a *power of sale* at their own discretion. The answer to the question should have been that, owing to sect. 56 of the Settled Land Act, 1882, the trustees could not sell without the consent of the tenant for life; but that under the Act of 1884, if several persons together formed the tenant for life, the consent of any one of them would suffice.

We hear a good deal of grumbling at the hardness of the questions set; we do not concur in these murmurs. Any candidate who had properly attended to his office duties during the greater part of his articles, and to his books during the last few months, would find no difficulty in satisfying the Examiners on the papers. Indeed, in these days of overcrowding the profession, it is the duty of those who have charge of the Examinations to see that the questions are so framed that no man can pass who has not attended to both the practice and theory of the law. What we should like to see would be straightforward questions on leading points, and a very strict method of marking adopted. In comparison with other Pass Examinations the tendency at the Law Society is to err on the side of leniency.

Again we complain of the Criminal paper. The questions could operate as no test at all of the student's real knowledge of the principles of the law of crimes. Particularly we object to questions 56, 63 and 64. If the same kind of questions continue, articled clerks will refuse to read the recognised text books for this paper, a result which we feel sure the Examiners would be sorry to bring about.

Our subscribers will have noticed the great number of questions which were covered by the Law Notes.

The "Honours" papers were well framed. This remark applies particularly to the Equity and Conveyancing questions, which were on general principles, and not merely the headnote to a recent case turned into a question — a case which probably 90 per cent. of the candidates had no opportunity of coming across, and not involving any important principle of law. There was in the common law paper a strong tendency in this—to our mind, an unwise direction, for questions 21, 23, 25 and 28 were all *case* questions, the points selected not being taken from the leading common law cases, but apparently from some Digest or Benjamin on Sales.

We hear that the number of candidates examined for Honors was not very large, and we fancy that the number will decrease from Examination to Examination, unless the present system of dividing into classes, 1st, 2nd, and 3rd, undergoes some alterations. As matters stand at present, one, two or three men only are *placed*, and the rest are huddled together in alphabetical order. To induce men to work for Honors the Examination Committee should place the 2nd class men in order of merit.

The "Honors List" will be exhibited in the Law Society Hall on Friday, Feb. 13th, and the result will be duly announced in the "Times" of the following morning, Saturday, Feb. 14, and in our columns for March.

NOTES ON THE INTERMEDIATE.

The Intermediate questions set at the Examination held on the 16th ult. were fair and straightforward. With such papers the Examiners would be justified in marking very strictly, and any candidate who is postponed must blame himself only; for with the exception of one question, "What is a trial at bar?" every point asked upon was one which, had he been properly taken through the work, he could not fail to have had his attention called to.

Our Supplement No. 2 containing the answers to the questions was published on the morning following the Examination, and was sent off to our subscribers with Supplements Nos. 1 and 3 early in the week after the Examination.

"MEMS. ON STEPHEN."

(*Continued.*)

The Rule in Shelley's Case.

Whenever a man by a gift or conveyance takes an estate of freehold, and in the same gift or conveyance

an estate is limited either mediately or immediately to his heirs in fee or in tail, the word "heirs" is a word of *limitation* and not of *purchase*.

Examples illustrating Shelley's Rule.

1. A grant to A. for life with remainder to his heirs. A. takes a fee simple and not a mere life estate, just as if the lands had been limited to A. and his heirs.

2. A grant to A. for life, then to B. for life with remainder to the heirs of A. A. takes a fee simple, subject to B.'s life estate.

3. A grant to A. to hold *during widowhood* with remainder to the heirs of her body. A. takes a fee tail because a grant "during widowhood" confers a freehold estate, and so Shelley's rule applies.

4. A grant to A. for life with remainder to A. "in fee simple." A. probably takes a fee simple, the words "in fee simple" in a deed being now equivalent to the word "heirs."

5. A devise by will to A. for life, with remainder to his "issue" or "children." A. takes a fee tail estate, the words "issue" and "children" being in *in a will* equivalent to "heirs of the body."

6. A grant by deed in the same terms. A. takes a life estate only because the words "issue" and "children" are not in a deed equivalent to the words "heirs of the body."

7. A grant or devise to A. for ninety-nine years, with remainder to A.'s heirs. A. takes the term only, for the rule does not apply where the particular estate is less than a freehold.

8. A devise to A. for life with remainder to the first and other sons of A. in tail. A. takes a life estate only, the sons being under such words "purchasers."

Reasons of the Rule in Shelley's Case.

There is a good deal of obscurity as to the *origin* of this famous rule. It was not started in *Shelley's case*, decided in Elizabeth's reign, but far earlier. *Shelley's case* merely confirmed the rule.

Probably, it was originated to protect the feudal lord, who would have lost many feudal incidents had the heir been allowed to take as purchaser, and not as heir. But perhaps it was started to favour alienation: since, if under a grant to A. for life, with remainder to his heirs, A. took the fee simple, he could alienate the same, and this right to alienate was favourably regarded about the time of the passing of the *Quia Emptores* Statute.

Tenants holding in Community.

1. Joint tenants. 2. Tenants in common. 3. Coparceners. 4. Tenants by entireties.

Unities of Joint Tenants.

*P*ossession, *I*nterest, *T*itle, and *T*ime of commencement of title.

[The initial letters spell Pitt.]

NOTES ON THE PRELIMINARY.

The next Examination is fixed for Wednesday and Thursday, 11th and 12th February. For a list of subjects see the January Law Notes, Vol. IV., p. 27.

The May Examination is fixed for Wednesday and Thursday the 6th and 7th of that month.

The subjects are the same as for the February Examination, except that the following books are selected in subject No. 6.

In Latin:—Cicero, De Amicitiâ; *or*, Horace, Odes, Books III., IV.

In Greek:—Euripides, Andromache.

In French:—Lesage, Gil Blas de Santillane, Liv. V., VI. and VII.; *or*, Racine, Athalie.

In German:—Goethe, Die Leiden des Jungen Werther; *or*, Lessing, Nathan der Weise.

In Spanish:—Cervantes, Don Quixote, cap. xxxi. to lii. both inclusive; *or*, Moratin, La Mojigata.

In Italian:—Beccaria, Trattato dei Delitti e delle Pene; *or*, Dante's Inferno, Cantos 1—10, and Gallenga's English and Italian Grammar.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Answers to Correspondents.

Jumbo.—(1) Twenty years. (2) Apply for adjudication at Somerset House. (3) Only by special grace of the Sovereign.

Ship Canal.—(1) The Court held that it was a mere licence and not a contract, and so could be revoked. Had the licence been revoked without good cause, the defendant would have been liable in damages, as a consideration was paid for the licence. (2) It is not.

E. T. Fox.—June, 1885.

T. R.—You are quite right, see "Notes on Final." Thanks for your kindness in writing.

Abbott.—Your list is very good. The son of a devisee is a perfectly good witness, and the devise will not be affected.

D. O. B.—A. could not compel D. to make the request. But it appears that A. has a *right* to insist on spending his last year in town apart from the articles. Write to the Secretary of the Law Society on the subject.

Snell Dubitante.—What Snell states is correct, though it might be stated more clearly.

H. G. Brown.—Many thanks. We shall probably comment on the subject of your letter in a future Number.

E. B. P. C.—We do not think the matter you refer to of sufficient general interest.

Jewkins.—We do not think any such statement was made in *Weldon* v. *De Bathe*. If it was, then the matter will call for serious comment from us directly the full report of the case appears.

Tyro.—(1) This would seem to be so. (2) In both churches, but one of the parties must reside in the parish in which the marriage is to be solemnized.

C. B. W.—We regret that the judgment is not familiar to us.

John F. Edell.—February, 1882. We hardly think this necessary at present.

J. W. Wessell.—We believe this case is without precedent.

C. W. Williams.—Thanks; evidently this would be so.

Lex.—The answer to this query depends entirely on the terms of the contract. But probably the contract was complete, and, if so, A. would be the person to sue the carrier, and he could not refuse to receive the furniture.

Feoffment.—Get the 4th ed. of Gibson's Guide to Stephen, which calls attention to all the recent Acts.

Incognitus.—(1) Yes, if articled *early* in July, *i. e.*, if your two-and-a-half years' service will expire before the day fixed for the January Examination, which is usually about the 15th. (2) We think so. (3) The 9th ed. will be allowed no doubt. (4) The Judicature Rules, 1883, and the Bankruptcy Act, 1883, are not included, but the other statutes you refer to are. Many thanks for your kind expressions.

Sale of Chattels.—We thank you for your letter. The subject you refer to is a very important and difficult one. If possible we will have an article on the subject, but we cannot definitely promise.

F. H. Stapley.—We prefer Green's History.

Lex (Hull).—To C.

J. Herbert Dennis.—An article on *Scintilla Juris* has already been given (see Law Notes for March, 1883, Vol. II. p. 81).

R. J. Kendrick.—This subject is so fully dealt with in the text books that we do not think our space would be well devoted to it.

John J. Addison.—We hope to continue the articles on "Town Practice" from time to time. Thanks for your kind expressions, we are very pleased you like the alterations in the Law Notes.

R. M. Hall.—This is outside our correspondence columns. We may, however, give a list before very long.

R. W. Andrews.—The mortgagee has such a power.

T. Bennett.—Many thanks. If you will compare the old and the present margins you will find that there is very little difference.

J. L. Haslehurst.—(1) The question whether a married woman could elect with regard to separate property with a restraint on anticipation was reserved in *Re Quæde's Trusts*, and consequently at present the point is in abeyance. Chitty, J., having decided in *Re Wheatley* (27 Ch. D.) that she could do so, and Kay, J., having decided that she could not in *Re Varden's Trusts* (L. T. Vol. 78, p. 59). (2) *Preston* v. *Luck* would be better entered in your common law books. (3) We hope to continue the articles on "Town Practice" from time to time.

Embryo.—We think that the trustees are not acting within their powers, and that if a loss arose they would be held responsible for it.

J. T. Phillips.—Certainly he can give evidence; he was an eye-witness. This would apply equally to criminal as to civil actions.

Correspondents' Queries.

To the Editor of the "Law Notes."

Deposit.

Sir,—A. buys an acre of potatoes of B., and pays a deposit of 20*s*. B. allows his cattle to run over the potatoes whereby a part of them are spoiled. A. refuses to take the potatoes and demands back the money he has paid. 1. Can A. recover the deposit? 2. Can he also recover damages?

L. B.

To the Editor of the "Law Notes."

Patent Law.

Dear Sir,—Can you or any of your readers tell me if it is an infringement of any telephone patent for an amateur to make one for use in a private house and not for purposes of profit?

Telephone.

To the Editor of the "Law Notes."

General Order under Solicitors' Remuneration Act.

On a lease for about nineteen years, being the whole of the lessor's interest less a few days in the property in question (but which is held under the same title with other property), at a premium of 490*l*. and rent of a peppercorn, the lessor's solicitors charge a fee of 7*l*. 10*s*. on premium and 5*l*. on lease. The lessee objects to the latter payment on the ground that the lease is not at a rack rent, nor for a long term. The opinions of your subscribers are desired, with cases, if any.

J. A.

REVIEWS.

Greenwood's Real Property Statutes. 2nd edition.—In a review of this work in the January Number it was stated that "on one point we have looked in vain for elucidation, viz., whether a married woman can now be considered, for the purposes of suing under the Statutes of Limitation, as being under disability." The Author has, in reply to this, drawn our attention to p. 357 of his book, where, in connection with actions by married women, it is stated, "And inasmuch as her right to sue as a *feme sole* only arose on 1st January, 1883, time will only run against her under the Statutes of Limitation from such date only," and in support is cited *Weldon* v. *Neal*, 32 W. R. 828. We regret extremely that this statement escaped our notice, but when looking for the point we naturally referred to the pages treating of disabilities (p. 40 to p. 44), on which there is no reference whatever to the M. W. P. Act, 1882, and coverture is treated of as if it were still a disability unaffected by the Act of 1882.

The Law of Contracts. By J. W. Smith, Esq., late of the Inner Temple, Barrister-at-Law. 8th edition, edited by Vincent C. Thompson, Esq., M.A., of Lincoln's Inn, Barrister-at-Law.—For the benefit of those who do not know, it may be stated that this work is founded on lectures delivered on this subject by the late John William Smith at the Law Institute in 1842. This is now the eighth edition that has appeared since the lecturer's death, the three last having been edited by the present editor. The number of editions the work has run through testifies more eloquently than words to the great excellence of the book. The editor has certainly succeeded in his object, "to make his own additions as short as possible," and he is much to be commended for this determination. The book is divided into ten lectures, each lecture dealing with, and as a general rule exhausting, one particular subdivision of the subject. In Lecture VIII., dealing with the contracts of married women, the effect of the Married Women's Property Act, 1882, is fully and ably considered, but we must take exception to the statement of the editor on p. 514, that infants, *married women*, &c., have, under the Statutes of Limitation, a further period, &c., after removal of disability. Surely the effect of the Married Women's Property Act will be to take married women out of this exception, and if so, some qualifying words ought to have been added to the statement? Again, in Lecture X., when dealing with the contract of partnership and the necessary essential of agency and liabilities of each member, no mention is made of *Cleather* v. *Twisden*, probably—and the reason may hold good—that that case involved a question of tort, not contract. The Lectures, however, are really admirable, and any student desiring to read a special work on the subject of Contract could not do better than get this book. It is published by Messrs. Stevens & Sons, H. Sweet, and W. Maxwell & Son.

Commentaries on Equity Jurisprudence. By the Honorable Mr. Justice Story, LL.D. First English edition by W. E. Grigsby, Esq., LL.D. (London), B.C.L. (Oxon.), Barrister-at-Law.—Story's Equity, though an American law-book, has been used a great deal by English lawyers, by whom it has been regarded as a most reliable work. Unfortunately, however, the recent editions of the book, as, perhaps, might be expected, have referred more to American than to English cases, and, by this means, it has lost much of its attraction to lawyers practising on this side of the Atlantic. It is to this fact that we are indebted for the present English edition.

In the book before us, we find that the principles of Equity, as recognized in our Courts, have been most clearly enunciated. We have tested the work in a great many cases, and find everything clearly and accurately stated. A novel feature in the book is the analysis which appears at the commencement of each chapter, giving the section in which each matter treated of will be found. This makes the work doubly useful as a work of reference, and the analysis has not been prepared at the expense of the index: for we find that the index is full and complete. The English cases are brought down to August, 1884, and the recent English statutes are also well dealt with—even so recent an Act as the Intestates Act, 1884, finding its proper place in the book.

The work should be placed on the book-shelf of every solicitor who has any Equity practice to speak of. For students, except those who aim at high honors, and have ample time at their command, the book is too large, even if there were for their purpose need of a book on the subject, which there certainly is not.

It merely remains for us to add a word of praise to the publishers and the printers for the excellent way in which the book is printed and bound. It is published by Messrs. Stevens & Haynes, Bell Yard, W.C.

The Law Quarterly Review.—This new Magazine evidently proposes to take position and rank in legal circles analogous to that held by the "Nineteenth Century" and like magazines in literature. The proposal is ambitious, worthy of praise, and deserves success. The obvious question, however, arises, whether practical prosaic lawyers care, or have the leisure, to theorise on such subjects as the advisability of redrawing the 17th section of the Statute of Frauds, which forms the subject of the first article. Surely, too, we have had ample discussion in our daily papers of the Franchise Bill to render an article unnecessary; and to what good purpose shall practical lawyers read articles on "Holtzendorff's Enclyclopädiæ" or "Federal Government"? Learned and intellectual the articles are without question,

and pleasant reading for those with leisure—barristers not yet to the fore; but for work-a-day business solicitors, the leaves will probably remain uncut. It is published by Messrs. Stevens & Sons, 119, Chancery Lane, W.C.

Harrison's Epitome of the Criminal Law. Second edition. By James Carter Harrison, Esq.—This work continues in the form of questions and answers, but Mr. Harrison has prefaced the questions by a useful introduction. Our objection to imparting information by way of question and answer is well known, but if the plan is permissible on any subject, it is in criminal law. It must not, however, be understood that we recommend any student to rely on the book before us. What we advise is, that he first read "Harris's Crimes" or "Stephen's Commentaries" (Book VI.), and then test his knowledge by a careful perusal of these questions and answers. We are pleased to find that the subject of "False Pretences" has been dealt with in this edition, and that several other points in which slips occurred in the first edition have been rectified. In the Introduction we looked for the author's opinion with regard to accessories before the fact in manslaughter, and were disappointed to find total silence on the subject. The work has been generally improved, and we do not think that any reasonable grumble can be made with regard to the small extra sum which has been added to the price. It is excellently printed and bound, and much credit is reflected on the printer and on the publishers, Messrs. Reeves & Turner, 100, Chancery Lane.

History of the Origin of the Law Reports. By W. T. S. Daniel, Esq., Q.C., late Judge of County Courts.—Remembering the obstacles the "Law Reports" had to contend against in its youth, it is certainly permissible for the founder to complete for his own satisfaction a self-congratulatory retrospect of his own labours, and those who worked with him. The Reports at present are not without fault by any means; but in spite of faults, they have undoubtedly been a financial success, a point to which the author draws special attention. The book is well written, well printed, well bound, and all who pride themselves on the completeness of their libraries should obtain a copy, and place it on the shelf alongside the first volume of the Reports; having done that, its existence will probably be forgotten, and we do not think anyone will suffer. It is published by Messrs. Clowes & Son, Fleet Street.

Broom's Commentaries on the Common Law. 7th edition, by W. F. A. Archibald, M.A., and Herbert W. Greene, M.A., B.C.L., Esqrs.—This work, which is designed as an introduction to the study of the common law, is so well known and appreciated by the profession generally, that it is only necessary for us to see whether the present editors have done justice to the book. On this point we are pleased to be able to state that as far as we have tested it the present edition is accurately done, recent cases and statutes being duly incorporated without in any way impairing the familiar and favourite style of writing of the late Dr. Broom. The book should be in every solicitor's library, and taken up by the articled clerk after passing his Intermediate Examination. It is published by Messrs. Maxwell & Son, Bell Yard, W.C.

We have also received a pamphlet by H. S. Bowen, Esq., Barrister-at-Law, containing a Digest of Important Cases decided in 1884, with comments; and an Extract from Important Statutes for that Year, without comments. It is published by Messrs. Clowes & Son, Fleet Street.

LAW STUDENTS' DEBATING SOCIETIES.

Sheffield District Law Students' Society.

The sixth meeting of the present session of this Society was held in the Law Library, Bank Street, on Tuesday evening, the 13th inst., Mr. Benjamin Greaves, solicitor, in the chair, when the following question was discussed:—"Should the Parliamentary Franchise be extended to women?" The following gentlemen took part in the discussion:—Messrs. F. A. Sarjeant, F. J. Hale and J. C. Auty for the affirmative; and Messrs. Thos. Broomhead and Richard R. Stratton for the negative. On the question being put to the meeting it was decided in the affirmative by the casting vote of the chairman.

We have also to acknowledge with thanks receipt of several other reports. The Preston Law Students' Society sends us an address delivered by the President. And from the Liverpool Law Students' Society comes the Annual Report, together with the President's address. We much regret that the continuation of our Bankruptcy articles crowds this matter out.

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Law Notes.

Edited by ALBERT GIBSON.

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NOTICE.

Arrangements have been made to supply all the Numbers of the "Law Notes" for 1885, *and Supplements* **gratis**, *to any intending Subscriber remitting his Subscription of* 6*s.* 6*d.* **directly** *to the office of the "Law Notes" any time during the year; provided all back Numbers are in print at the time of application. If any of the Supplements are out of print, then the "Law Notes," and such Numbers of the Supplements only as are in print, can be supplied for* 6*s.* 6*d. A sufficiently large issue has, of course, been ordered to supply all who have* **already** *Subscribed or renewed their Subscriptions with all Supplements.*

The "Notice to Subscribers," issued on pink paper with the December Number, has evidently not been read by some Subscribers. We have, therefore, to again announce that in future Subscribers will receive **all three** (*Final, Intermediate and Honors*) *Supplements together early in the week following each Examination; for the reasons for this alteration we must refer to the Notice. The Final and Intermediate Supplements are* **on sale** *at the Publishers,* Messrs. Reeves & Turner, 100, *Chancery Lane, on the mornings after the Examinations as hitherto.*

SOME NOTES.

In another column will be found a list of references to those cases which in our table of cases to last year's volume had no references, and of supplemental references to other cases of importance. We must now leave subscribers to fill up any others as they may chance to find them.

In our last issue we ventured to mildly express an opinion that so long as extraordinary tithes were legal they ought to be paid: a sentiment that no law-abiding citizen need be ashamed of: we further ventured to suggest that the sooner the law as to extraordinary tithes was amended the better. We little guessed that we had brought down on ourselves the wrath of a correspondent signing himself "Amicus Agricola, sed major Justitia." By the way we handed this signature over to the classical member of our staff;—he has taken a week's holiday, he says, to thoroughly master its intricacies; at present, therefore, we are in doubt what the signature may mean. We are not classical, still we know what "audi alteram partem" means: therefore, let "friend Agricola" have his say. He asks:—

"1. Why, and in what sense, the law should be amended?"

We only meant "altered," and are sorry we used a big word.

"2. Is not 'tithe' a property of the church as a corporation?"

We never questioned this statement.

"3. Is the State more entitled to confiscate the tithes than it is to alienate the property of the College of Surgeons?"

We never suggested confiscation, and know nothing of the property of the College of Surgeons.

"4. Was not the extraordinary charge imposed separately at the express desire of the tithe payers? Has it not quite as fair a foundation in fact, as well as origin, as the ordinary charge?"

Very probably, it may be assumed that the former method of paying tithes was too unbearable. Admitting the second part we shall not admit much.

"5. Would any mind, other than that of the demagogue or the bucolic, have any difficulty in seeing the absurdity of condemning the extraordinary tithe as a restraint upon agriculture, or of regarding compensation for a few life interests as justifying the wholesale plunder of a vast community?"

We did not consider ourselves either demagogues or bucolics, yet we find a difficulty in seeing these points. In plain language, we suppose our agricultural friend means that we are either knaves or fools. Well, we must be fools; paying no extraordinary tithes ourselves, and having therefore no personal interest in getting quit of them, we have no object to serve by being knaves. Now, one question to our "Amicus." Does he receive any extraordinary tithes? We answer ourselves emphatically in the negative, otherwise he would not have written so strongly.

The following correspondence has been sent us:—

"Dear Sir,—As a member and correspondent for the above (School) Board, I have the pleasure of *given* you an *invation* to TENDER for the clerkship of the said Board, *such tender* been sent in to me not later than Monday next, the 16th inst.

I am, dear Sir, &c."

Our informant replied that he would "tender his name," to which he received the following reply:—

"Dear Sir,—Yours duly to hand, *but you do not say what salary.* I mean by giving you an invation to tender for the clerkship of the above Board (if elected) to say what salary you will take p^{r} *anum* for your services, *or do I understand you will take it for nothing.*

I am, yours respectfully, &c."

In answer to this, he replied "that he refused to lower his learned profession to that of a trade." The correspondence abruptly closed. Now the ques-

tion arises, is that enterprising "member and correspondent" acting on his own ideas or under authority? If on his own ideas the matter can be dismissed; that probably the owner himself of a ham and bacon shop, he was merely applying to the administration of the School Board those principles of business he had found paid him so well in his own trade—to tender at the lowest amount and quality. But supposing he is acting under the authority of the School Board officials the matter is much more serious. Is this the way the School Board get their local legal business done throughout the country? if so, then immediate steps ought to be taken to prevent a public body putting such an insult on our profession. We can only hope they just get the quality of legal work which corresponds with the price they pay for it. The suggestion that our informant having named "no price for his brains per pound" would be willing to sell them for nothing, is even, in these days of under-cutting, comical.

So the Matrimonial Causes Act, 1884—or the Weldon Relief Act commonly called—is retrospective. The Act provides that from and after its date a decree for restitution of conjugal rights shall not be enforced by attachment. Sir James Hannen considered that, supposing Mr. Weldon had been in prison at the date of the Act passing, he would have been entitled to have been released at once. All right; now to put a logical but supposititious case. On and after a certain date, a new Act provides that burglary shall not be punished by imprisonment. The moment such an Act passed all burglars should be released. We must confess that hitherto we had thought erroneously, as it turns out, that an Act of Parliament is not retrospective unless specially so provided in the Act. We await with curiosity the decision of the Court of Appeal; surely that Court will not lay down the rule that statutes are to be deemed retrospective unless otherwise stated.

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men...
been a Married Women's Property Act, 1882, has draws spe..itful source of litigation, and we do not well printed, ..e decisions on the Act are at all in on the complete..for the most part they carry out the copy, and place ..Legislature evidently framed the volume of the Rep..ute. The decision in *Weldon* v. tence will probably be Vol. III., p. 265), that the Act anyone will suffer. It is ..ring a vested right of action & Son, Fleet Street. ——..o the wife, struck us as a *Broom's Commentaries on*..ords of the Act. *Mander* edition, by W. F. A. Archi..I., p. 228) was another bert W. Greene, M.A., B.C.L. In this case, it will which is designed as an introdu..peal construed a will the common law, is so well know who died after the by the profession generally, that it..t as to its effect for us to see whether the present ed..ind the decision justice to the book. On this point we..be regulated and construed according to the new law, was much more in accordance with common sense and reason than that of the Court which altered it. And lastly comes *Stafford* v. *Stafford*, which we give in another column of this Number (see *post*, p. 70). The decision in this case shows that the now common notion that a married woman is for all practical purposes in the position of a *feme sole* is, like a good many other popular notions, erroneous.

The facts in this case were simple enough. A. B., a married woman, by will made 19th January, 1884, gave the residue of her property as to one equal part to C. D., and as to the other equal part among certain nephews and nieces. Her husband died on 26th January, 1884, having by his will given the residue of his property to his wife, the said A. B. A. B. died on 29th January, 1884, without having re-executed her will.

The question arose, whether the residue of the husband's estate passed under A. B.'s will, or whether as to it she died intestate. Pearson, J., held that, as sect. 1 of the M. W. P. Act, 1882, in allowing a married woman to make a will as *feme sole*, only speaks of *separate property*, a term referred to also in subsequent sections, the will would not pass the property acquired under the husband's will, since, as it came to her after his death, it was not *separate property*, for separate property cannot belong to a single woman, the position A. B. was in through her husband's death, and consequently that A. B. died intestate as to that property which came to her under her husband's will, and that her residuary legatees had no claim to it.

This is giving a very strained construction to a statute which in other quarters has met with a particularly liberal construction—*e. g.* in *Weldon* v. *Winslow*, referred to *supra*; and, in effect, *Stafford* v. *Stafford* decides that, though the Act enacts that a married woman can make a will as a *feme sole*, yet a will of a married woman shall not be construed as if she were a *feme sole*; for if such construction were put upon it the will would have spoken from the death of the testatrix, and have included all property which she was possessed of at that time.

Sawyer v. *Sawyer*, given in another column (see *post*, p. 69), is equally unsatisfactory, since it practically decides that, even with regard to separate property held by a married woman without any restraint on anticipation, the possessor is not in the same position as a *feme sole*, since such property was held not to be responsible for a breach of trust committed with the connivance of the cestui que trust.

Sawyer v. *Sawyer* is a Court of Appeal decision, and will in all probability not be carried further;

but the decision in *Stafford* v. *Stafford* will, we imagine and hope, be carried to the Court of Appeal, since, as it stands, it throws much unnecessary difficulty in the position of married women under the Act of 1882; and we cannot help thinking that while it may be a decision within the letter of the Act—which it must be admitted is curiously and in many instances absurdly worded—it is certainly not within what is generally conceived to be the spirit of the statute.

The extent to which Masters do those things they ought not to do and refuse to do other things which by the rules they are bound to do, is simply appalling to a mind fairly acquainted with the rules of Court. Only the other day we heard of a case in which a Master declined to make an order for substituted service, when the practice books absolutely gave cases which laid down that, certain circumstances existing, the Master was bound to grant the order. The plaintiff referred to the Judge and of course got the order. We might almost start a column "Mistakes of Masters" if some of our practical correspondents would keep us informed of them.

Read v. *Anderson* already bears fruit. Bookmakers have not been slow to act on the tip given them by that decision. In *Read* v. *Thomas*, a bookmaker named Read, possibly the same man, sued for 55*l*., in the euphonious language of the report, "for money paid by him at the defendant Thomas's request," practically for a bet made on commission and lost. The defendant pleaded that in reality it was a direct bet between himself and the plaintiff, and was therefore not recoverable. Mr. Justice Smith simply put the question to the jury to decide whether it was a direct bet or a bet on commission, merely pointing out that in the former case it was recoverable, in the latter it was not. The jury decided that it was a bet made on commission and so recoverable. Captious critics of the law would call this distinction a legal quibble.

Would it have ever occurred to anyone, except an interested person in the case, to consider that "horses, cows and sheep" come under the term "household" effects? So the plaintiff tried to show in *Johnson* v. *Johnson*, but naturally unsuccessfully. We can readily imagine that in Ireland "pigs" are included in the "household effects," as "cows" are in Holland; but not here, not in England, at least not yet.

The quiet way inconvenient statutes are ignored, and ignorers backed up by the Courts, is strange. Everyone has heard of Leeman's Act, which had for its object the prevention of gambling in stocks and shares: an object which it has not effected, as the most veritable tyro knows. Well, this Act, to carry out its object, provided that distinguishing numbers of the shares sold should appear on all contract notes; but, in spite of this, it is the custom of the Stock Exchange not to do so. Well and good; if an association of men choose to ignore a statute of this nature, they can certainly do so if they choose; but it seems curious to find the Courts backing them up. Still, this is what the decision in *Seymour* v. *Bridge* amounts to. There the defendant repudiated the contract, on the ground that the shares were not numbered, and relied on Leeman's Act. The plaintiffs relied on *Read* v. *Anderson*, that they would have to pay for the shares, if they did not they would be defaulters, and so come within that decision. And in this view the Court supported them. So that the Court has practically held that a custom of a stock exchange can override an Act of Parliament. Another rule for the construction of statutes for Intermediate students to know: Acts in derogation of the powers of future Parliaments, or of customs of the Stock Exchange, bind not.

In the more recent case of *Perry* v. *Barnett*, Mr. Justice Grove appeared to dissent from the decision in *Seymour* v. *Bridge*. He expressly stated, however, that he in no way intended to differ from the decision. His Lordship, however, held, that as the defendant had no knowledge of the custom in the Stock Exchange not to give the numbers, he should not make him liable; and so, inferentially, in this case the plaintiffs did not succeed in their action because they had not complied with Leeman's Act. Will Mr. Justice Grove and Mr. Justice Smith kindly let us know the exact advice which we should give a client who consulted us on this point?

The Woolwich murder case has brought the new Criminal Lunatics Act, 1884, into unpleasant notoriety. We cannot think that this statute was ever intended to give the Home Secretary the right to order the detention of a prisoner as a criminal lunatic till after trial. All the sections of the Act appear to contemplate the exercise of the power after trial; but one unfortunate section does speak of a prisoner awaiting his trial either on remand, on bail, &c.; but surely the Legislature did not intend an untried man to be committed as a criminal lunatic. Will the present Parliament have time to see to the amendment of this?

What do you say to a bill of costs for 29,963*l*. 7*s*. 3*d*.? What a nice little bill to be paid, but not to pay. This, we are informed, was the amount of the taxed costs in the case of *London Financial Association* v. *Kelk*, which lasted twenty-nine days. We endeavoured to ascertain how much of this went to counsel; the information was not forthcoming.

One method of reviving a statute-barred debt is by an unconditional promise in writing to pay. In *Tantz* v. *Lord Marcus Beresford*, the defendant, pressed for payment, wrote as follows:—"I must again ask you not to press me for the account I owe your firm. I hope by the end of the year to be able to settle all my liabilities. I must therefore ask your continued patience." Baron Huddleston held that this constituted an express acknowledgment of the amount due sufficient to take the debt out of the statute. The defendant is not the first debtor who has asked a creditor *not to press* his account; nor the first who has expressed *hope* to be able to settle all his liabilities; nor the first who has asked for *continued patience*. But will the learned baron kindly explain where the *unconditional promise* to pay comes in. With the expediency of the decision we find no fault, but cannot help questioning its soundness.

In another column will be found an article on "Law Students' Societies," by a contributor who has practical knowledge of the working and internal arrangements of these societies, and whose advice is worthy of consideration at the hands of all honorary secretaries.

Fancy rating a small barber 10*s*. per annum extra for water for trade purposes! It seems that he only used a quart or so of water per diem. For the credit of the company let us suppose the case was only enforced as a test case to prove their right to oblige barbers who used more than a quart a day to pay an increased rate.

We have more than once called attention to the difficulty which has arisen in the profession when trustees are vendors, and they retain the title deeds. The purchaser naturally asks that the vendors give not only the *acknowledgment* of the purchaser's right to the production of the deeds, but also that they give the *undertaking* to keep the deeds safe. The vendors are willing to give the acknowledgment, but refuse to incur the personal responsibility attendant upon the undertaking. In these circumstances it is cheering to find a way out of the difficulty suggested by the learned authors of Prideaux's Dissertations (13th ed.). A suggestion which will be very properly acted upon by the profession. The obligations of the undertaking imposed by sect. 9 of the Conveyancing Act are considered to be too wide, since, owing to the use of the word "control" in sub-sect. 9, the trustee might be responsible if, for example, his solicitor lost the title deeds, in the same way as if he himself lost them. It is therefore suggested that the undertaking as to title deeds when given by a trustee should be confined to his own personal acts and defaults, and not those of his agent or solicitor; and to prevent disputes arising the contract or conditions of sale should expressly provide that the vendor will retain the deeds, but, though a trustee, he will give an undertaking that, as far as his own personal acts go, the deeds shall be safely kept.

A correspondent asks us, "Whether a mortgagee for a term of years in land can make a lease under sect. 18 of the Conveyancing Act, 1881"? Offhand we should have said that without doubt he could do so, but looking closely to the words of the section and the definition of the word "land" given in sect. 2 of the Act, we are by no means sure. Sooner or later must come a decision to enlighten us, but until that time arrives it would appear desirable, when it is wished that sect. 18 of the Act of 1881 should be applicable to a mortgage for a term of years, to make it so by adding a few words to that effect in the mortgage deed.

In connection with the same section and the last sub-section thereof, a question suggests itself, "Can a lease of mortgaged premises under this section be made by parol?" the words of the sub-section imply so, but looking to an earlier sub-section we find that the lease must contain a "covenant," and this necessitates in our opinion that the lease must always be by deed. Further, if the lease is made by the mortgagor, a counterpart must be delivered to the mortgagee, and this requirement could hardly be complied with if the lease were a verbal one. At the same time it must be admitted that the words of the sub-section are very unfortunately framed, unless their object was to confuse.

Our readers will observe from our "case columns" for this month that the decision of Mr. Justice Pearson in *Ballard* v. *Tomlinson* (54 L. J., Ch. 127), on which we commented somewhat severely as an unnecessarily hard decision, has been reversed by the Court of Appeal. There may be and is no property in water percolating under the surface, and consequently a proprietor may drain away such water, although thereby he deprives his neighbour of the benefit of the water which, if left alone, would have found its way to the adjoining land (*Chasemore* v. *Richards*, 29 L. J. R., Ex. 81); yet, according to *Ballard* v. *Tomlinson*, he must not do any act whereby the water is sent in a polluted state into the adjoining property. This is the reasonable and proper view of the matter, and one which will be much more acceptable to the public than the decision of Mr. Justice Pearson.

Looking to the decision in *Pearson* v. *Pearson* (54 L. J., Ch. 32; and Law Notes, Vol. III. p. 232),

what course should be adopted to protect a purchaser of the goodwill of a business in the event of the vendor being likely to practically rob him of his purchase, by soliciting custom from his old customers? That the vendor has this right we do not for a moment doubt, unless and until the House of Lords reverses the Court of Appeal in the above case. In the meanwhile, to protect himself, the purchaser should not be satisfied with the usual covenant that the vendor will not carry on a similar business to that sold by him within a certain distance of the old business premises, but should also insist on a covenant to the effect that if the purchaser starts business outside that distance he will not solicit custom from his former customers.

No wonder that Lord Coleridge expressed, at the Hertford assizes, amazement supreme at the sentence of a Court of Quarter Sessions of *fourteen years' penal servitude* on a man for stealing a fowl and some apples! True, the prisoner had been previously convicted for stealing, for which he had suffered two years' imprisonment, but, had he been half-a-dozen times convicted of theft, we doubt whether for the theft of a fowl and a few apples justice demanded so severe a punishment as fourteen years' service as a convict. The reports do not tell us whether, when the theft was committed, he was in a starving state or not! This unfortunate man was charged before Lord Coleridge with stealing a gun; and, being convicted, he escaped this time more easily, being sentenced to six weeks' imprisonment only. In what a curious light this criminal must regard the laws of his land! Fourteen years for the fowl stealing (a second offence), six weeks for gun stealing (a third offence)!

The facts above detailed show how necessary it is that there should be at every Court of Quarter Sessions some proper chairman, and that if the jurisdiction of these Courts is extended, as is proposed, too much care cannot be taken to prevent any such disgraceful administration of the criminal law as that to which Lord Coleridge called attention.

We wish success to the bill brought in by Mr. Ince, Q.C., for the relief of trustees with regard to the investment of trust funds on mortgage. The Act was no doubt suggested by the decisions in *Fry* v. *Tapson* (Law Notes, Vol. III. p. 257) and *Hoey* v. *Green* (Law Notes, Vol. IV. p. 10), and its object is to protect by statutory enactment a trustee who advances on mortgage of a house more than one-half and not more than two-thirds the value of the house *at the time of the loan*, and this whether the property is freehold or leasehold; but if the latter the lease must have at least eighty years to run.

CASES OF THE MONTH.

I.—GENERAL CASES.

[The references at the heads of the cases under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXVIII., where further details of the case may be found.

The references at the foot of the cases under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., and Tudor, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, and Tudor's Conveyancing Cases, and indicate the page at which a note of the decision should be entered.]

*** The case *Swindon* v. *Master & Co.*, Law Notes, Vol. IV., p. 35, should have been *Grunton* v. *Master & Co.*

In an Administration Action certain Real Property was sold by direction of the Court. The Purchaser paid the Purchase-money to the Solicitor in the Country employed to carry out the Sale. This Solicitor sent the Money by a Crossed Cheque to his Town Agent, who misapplied it. Does the loss fall on the Country Solicitor or on the Purchaser?

Asquith v. Asquith.

(W. N. 31; S. J. 259; L. T. 282.)

The country solicitor must bear the loss, for there was no privity between the purchaser and the town agent. So held by Chitty, J.

Sic utere tuo ut alienum non lædas.

Ballard v. Tomlinson.

(T. 270; W. N. 36; S. J. 272; L. J. 35.)

The decision of Mr. Justice Pearson in this case (see Law Notes, Vol. III., p. 72) has been reversed by the Court of Appeal. The facts in the case were, as our readers will remember, shortly these: On the premises of the plaintiff was an artesian well, sunk some 300 feet deep, with a chalk bed, from which was derived soft water, used by the plaintiff for brewing for the last thirty years. Hard by—not 100 yards off—was a similar well on the defendant's premises used for distillery purposes until 1874, when the defendant constructed a drain leading from a water-closet into the well. The effect of this was to pollute the water in the plaintiff's well, and so prevent its use for brewing purposes. This considerably damaged the plaintiff's business, and he sought

an injunction to restrain the defendant from using his well for the purposes to which he had put it to. Pearson, J., considered that the plaintiff had no right of action; the water in his well was derived from a large stratum of chalk, and it was taken and used subject to anything which might occur in the district to pollute it. It was a mere "*damnum*"—not "*injuria*"—if every man having a well within a certain district might complain of the way in which his neighbour used his well, it would cause very great inconvenience. The judges of the Court of Appeal were unanimous in holding that the decision must be reversed. Admitting that there was no property in percolating water, yet as the water came from a common source, every one had the right to appropriate it, and no one had the right to contaminate the source so as to prevent his neighbour having the right of appropriation, and this was practically what the defendant had done. The right to underground water was an incident of the ownership of land, and the defendant was not exercising that natural right by sending his sewage into the underground water, for no man has a right to pollute water to the injury of a neighbour.

(Underhill's Torts, 4th ed. p. 221.)

A., B. and C. are Trustees of a Settlement. A. is the Active Trustee, and B. and C. had only consented to act on A. undertaking to indemnify them against any Loss which might occur. The Trust Funds are lent on Mortgage. A. alone investigated the Security, which turned out insufficient, and a Loss arose to the Trust Estate. It was alleged that A. knew that the Security was insufficient, but that he concealed the Fact from B. and C. Can B. and C. throw the whole Responsibility for the Loss on A.?

Belemore v. Watson.

(S. J. 236.)

In the first place, if the remedy of the *cestui que trust* against all and each of the trustees for the breach of trust is in no way affected by any arrangement which the trustees may make among themselves. Secondly, an agreement by one trustee to indemnify the co-trustees is not binding, for there is no consideration to support it. Thirdly, there is no duty between co-trustees, so that one is bound to disclose all information he acquires to the other, and it is the duty of each trustee to make proper inquiries himself, and not rely on what is done by any co-trustee. Consequently the Court of Appeal held, in answer to the question which we have set out, that B. and C. could not throw the responsibility on A., but must share the loss with him, notwithstanding the agreement to indemnify and the fact that A. had practically acted as sole trustee.

(Snell, p. 153; Aids to Equity, p. 36; 2 Prideaux, 201; Underhill's Trusts, 2nd ed. p. 320; and as a note to *Brice* v. *Stokes*, Wh. & Tu. Equity Cases. See also *Lingard* v. *Bromley*, 1 V. & Bea. 114.)

A Testator gives certain Shares in a Banking Company upon Trust to permit and suffer the same or any part thereof to remain in its present state of Investment. The Bank was at the Testator's Death a Joint Stock Company regulated under a Deed of Settlement. If the Bank subsequently registers itself as a Company under the Companies Acts, are the Trustees justified in retaining the Shares?

Bucknill v. Morris, Re Morris.

(W. N. 31; S. J. 257; L. J. 32; L. T. 282.)

They cannot do so, if in connection with the new shares any liability arises which did not attach to the old shares, and this although the will provided that any conversion of the shares should be with the consent of the testator's wife, and she refused to give her consent to the trustees selling the shares. So held by Pearson, J.

(Snell, p. 154; Aids to Equity, p. 36; 2 Prideaux, 163; Underhill's Trusts, 2nd ed. p. 208.)

Articles of Association of a Company provide that if at a Meeting of Shareholders a Poll is demanded, "it shall be taken in such manner as the Chairman directs." Can a Chairman direct a Poll to be taken at once, or must he adjourn the Meeting, so that all the Shareholders may have another chance of Voting on the Resolution?

Chillingworth Iron Co., Limited, In re.

(T. 250; W. N. 29; S. J. 258; L. J. 29; L. T. 282.)

This question in connection with company law seems never to have been decided; but in *Regina* v. *D'Oyly*, 12 Ad. & El. 139, it was held that if at a meeting summoned for the election of churchwardens a poll was demanded, the poll should be taken immediately if time allow, and on the authority of this case, Kay, J., decided, in answer to the question we have set out above, that the chairman had the right to direct an immediate

poll to be taken, and this, notwithstanding a dictum by the late Master of the Rolls in *Re Horbury Bridge Coal and Iron Co.* (11 Ch. D. 114), to the effect that "we must import into the case our common law knowledge, that where a poll is demanded it never is taken then and there; and I am by no means of opinion that a chairman could direct it to be so taken;" and also a dictum by the present Master of the Rolls.—"You will have some difficulty in persuading me that if a poll is demanded a chairman can appoint it to be held then and there without notice to anybody not present."

(2 Fisher, p. 406; E. Smith's Com. Law, 2nd ed. p. 51.)

A Legacy is given to A., and if he dies in the Testator's lifetime to his Executors or Administrators. A. dies before the Testator. In what Character does A.'s Executor take the Legacy?

Clay v. Clay.

(W. N. 22; S. J. 236; L. J. 23.)

The legacy passes, decided the Court of Appeal, to the executor as part of the personal estate of A., *i. e.*, the executor takes the legacy *as executor* for the benefit of A.'s residuary legatees, and not as trustee for A.'s next of kin. *Palin* v. *Hills* (1 M. & K. 470), which decided that the executor took as trustee for the next of kin, had been practically overruled by *Long* v. *Watkinson* (17 Beav. 471), and *Webb* v. *Gadler* (L. R., 8 Ch. D. 419).

(Hayes and Jarman's Wills, 9th ed. p. 192; 2 Prideaux, p. 393.)

A Tenant for Life sells the Settled Property under the Powers conferred by the Settled Land Act, 1882. The Property sold consisted of a reversionary Interest in Lands. How must the "Capital Money" derived from the Sale be invested?

Cottrell v. Cottrell.

(W. N. 23; S. J. 237; L. J. 25; L. T. 263.)

The tenant for life's right to select the mode of investing "capital money" is subject to the provisions of sect. 34 of the Act. Under that section, where the capital money is derived from the sale of property less than the fee or from a reversionary interest in property, application can be made to the Court by any one interested for direction as to the mode in which the capital money shall be laid out; the object of this section being to keep the tenant for life and remainderman in the same position, as far as may be, as if there had been no sale. In the above case the settled property was leased for a term of years at a rent of 200*l.*, and the tenant for life sold the reversion in the lease for 10,000*l.* This "capital money" would, when invested, produce at least 300*l.* a year, and the question for Kay, J., to decide was, whether the tenant for life was to have the whole of the income derived from the investment or not. The learned judge decided that the tenant for life must have 200*l.* a year only, and then the surplus must be invested and accumulated for the benefit of the remainderman.

(Underhill's Settled Land Acts, 2nd ed. p. 38, and in other books on the Acts as a note to sect. 34 of the Act of 1882; 2 Prideaux, p. 222.)

Does a Document which accompanies a Deposit of Goods as a Security for a Loan, and gives the Lender a Power of Sale, require Registration as a Bill of Sale?

Cunningham & Co. (Limited), In re.

(S. 227; W. N. 18; S. J. 237; L. J. 19; L. T. 263.)

Pearson, J., decided that it does not. The form of a bill of sale given in the schedule to the Act of 1882 was entirely inapplicable to a case in which the possession of the goods was immediately transferred to the grantee, and it could not have been intended that the Act should apply to a transaction which could not possibly be expressed in the statutory form. This is an extension of the principle decided in *Re Hall, Ex parte Close*, Law Notes, Feb. 1885, Vol. IV. p. 39.

(1 Fisher, 1824, and 1 Prideaux, p. 696.)

A. brings a Foreclosure Action against several Incumbrancers and the Mortgagor. None of the Defendants appear. Will the Court allow successive Periods to each Defendant in which to redeem, or fix one Period only?

Doble v. Manby.

(W. N. 30, 36; S. J. 257; L. J. 30; L. T. 298.)

Only one period will be allowed, whether the plaintiff in the statement of claim alleges that the subsequent incumbrancers "are entitled," or that they simply "claim to be entitled," to charges on the property. To fix several times was to make a decree as between co-defendants which should not be granted except upon the request of a defendant. This was decided by Pearson, J., after consulting with Kay, J., and was subsequently

followed by Kay, J., in *Davies* v. *Manley*, in which a different order had previously been made.

(5 Fisher, p. 65; Snell, p. 300; Aids to Equity, p. 75.)

When will the Court grant an Injunction to prevent an apprehended Injury?

Fletcher & Son v. Bealey & Co.

(W. N. 24; S. J. 239; L. J. 20; L. T. 263.)

An action for an injunction to *prevent* some injury which may happen, is an action, said Pearson, J., in the nature of an action *quia timet*, and to justify the Court's interference two points at least must be proved, viz.:—(1) the danger must be imminent; (2) the injury, if inflicted, must be shown to be of a very substantial—almost irreparable—character. And in the above case the motion for an injunction to prevent the apprehended pollution of a stream was refused, these two points not being conclusively proved.

(Snell, p. 617; Aids to Equity, p. 178.)

Is a Person who applied for and received an Allotment of Shares in a Company, but whose Name was never registered as a Shareholder, liable to be placed in the List of Contributories in the event of the Company being wound up?

The Florence Land Co., In re, Nicol's Case.

(T. 221; W. N. 11; S. J. 216.)

The Court of Appeal decided that he is not; until the registration the contract remains *in fieri*, and does not give the *status* of membership to the allottee. Sect. 23 of the Companies Act, 1862, makes the entry of the name of the shareholder in the register a condition precedent to membership. The contract remained unperformed up to the time of winding up, and the Court would not enter the name of the allottee on the register, and thus make him liable as a contributory.

(Emden's Co. Law, p. 144; E. Smith's Co. Law, 2nd ed. p. 37.)

How should the Costs for preparing a Lease be taxed, the Lease being executed in 1883 *as the fulfilment of certain Conditions contained in an Agreement for a Lease (the Agreement giving in the Schedule the Form of the Lease to be subsequently prepared) made in* 1881?

Hickley and Steward, In re.

(W. N. 15; S. J. 222; L. J. 16.)

Following the decision in *Re Lacey* (25 Ch. D. 501, and Law Notes, Vol. III. p. 7), Chitty, J., decided that, since all the work for which the scale fee in Schedule I. of the Remuneration Order, 1881, is allowed, was not done, the costs must be taxed under Schedule II. of the Order. The scale fee given in Schedule I. can only be allowed when the solicitor has substantially done the business mentioned in the schedule, and in this case, the main work had been done when the agreement was prepared in August, 1881, before the Remuneration Order had been drawn up.

A Tenant covenants to Pay "Sewers Rate, Main Drainage Rate, and all other Taxes, Rates, Impositions and Outgoings whatsoever to be charged or imposed on or in respect of the Premises, or any part thereof, except Landlord's Property Tax." Can the Landlord insist on the Tenant paying the Costs of Paving the Roads adjoining the Premises (required by the Local Board)?

Hill and Another v. Edward.

(T. 253; W. N. 32; L. J. 32.)

He cannot, for the words "impositions and outgoings" were *ejusdem generis* with the previous words of the covenant, and did not include a liability to pay the costs of the paving of the roads adjoining the demised premises, done by the Local Board, under the authority of sect. 175 of the Public Health Act, 1875. Mathew, J., in thus deciding, followed the decision in *Tidswell* v. *Whitworth* (L. R., 2 C. P. D. 326).

(2 Prideaux, p. 10.)

A Plaintiff sues for Specific Performance, and as an alternative claims Damages for Breach of the Contract. After Action brought, and before hearing, Plaintiff re-sold the Subject-matter of the Contract. Will the Court give him Damages instead of the Specific Performance in such a Case?

Hipgrave v. Cave.

(L. T. 281.)

Not unless before the hearing the plaintiff had amended his writ and pleadings by abandoning the claim for specific performance, for by his conduct in selling the plaintiff had rendered specific performance impossible, and the Court of Appeal decided that an amendment could not be allowed at the hearing in such a case.

(Snell, p. 597; Aids to Equity, p. 164.)

Must a Purchaser of a Lease be satisfied with the Receipt for the last Rent due before Completion as Evidence of Performance of the Covenants under Sect. 3 (*Sub-sect.* 4) *of the Conveyancing Act,* 1881, *when the Rent was but a Peppercorn?*

Moody and Yate's Contract, In re.

(W. N. 30; S. J. 256; L. J. 30; L. T. 299.)

Chitty, J., said that the Conveyancing Act provision did not apply in such a case, for a peppercorn was not paid, but *yielded;* and therefore, in the absence of stipulation, the purchaser could require other evidence of the covenants of the lease having been performed. Further, the judge held that the production of the certificate by the lessor's surveyor to prove that the house covenanted to be built on the lands leased had been duly erected, must be produced at the vendor's expense, although not in his possession, since it was not a certificate or evidence within the meaning of sect. 3, sub-sect. 6, of the Conveyancing Act, but a part of the title itself.

(1 Prideaux, p. 11.)

If the Residue of a Testator's Personal Estate which has been given to Trustees upon Trust for one for Life with Remainders over, has been invested on Mortgage, and the Security proves deficient, how is the Loss to be borne?

Moore v. Johnson, Moore, In re.

(W. N. 17; S. J. 220; L. J. 17; L. T. 264.)

This difficult question arose under the following circumstances:—A testator gave his residuary personal estate to trustees upon trust for A. for life, with remainder to B., C., D. and E. absolutely. Of this residue 8,000*l.* was invested on mortgage of real property. The interest on this mortgage fell into arrear to the extent of over 500*l.*, and the mortgaged property was sold by the trustees and realized only 7,900*l.*, and nothing could be obtained from the mortgagor on his personal covenant. The tenant for life having died, the question arose as to what were the rights of his representatives and of the remaindermen with regard to this 7,900*l.* A.'s representatives contended that as A. had not received the interest an account ought to be taken of the sum which, if it had been received at the time of the mortgagor first making default in payment of interest, would, with compound interest at 4 per cent., have produced at the time of the sale 7,900*l.*, and that this sum be treated as capital and paid to the remaindermen, and that the rest of the 7,900*l.* be paid to the representatives of the tenant for life. Pearson, J., however, refused to thus adjust the matter. The tenant for life had, it was true, lost the interest which he might have made by investment had the interest been properly paid to him; but there was no fund to compensate him out of, for he could not be compensated at the expense of the remaindermen. And the 7,900*l.* was directed to be apportioned between the tenant for life and the remaindermen in the proportion which the interest overdue bore to the original sum of 8,000*l.*

(Notes to *Howe* v. *Lord Dartmouth,* White & T.'s L. C. in Equity.)

Can the Court dispense with the words "and reduced" being added to a Company limited by Shares during the period which elapses between the Presentation of a Petition under the Companies Act, 1877, *for Reduction of the Capital of the Company and the hearing thereof?*

River Plate Fresh Meat Co. Limited, In re, The.

(W. N. 14; S. J. 321.)

The Court can do so, though the case is not covered by sect. 4 of the Act of 1877; and in the above case Bacon, V.-C., made the order asked for.

(2 Fisher, p. 319; and E. Smith's Company Law, 2nd ed. p. 191; and compare *Langdale's Chemical Manure Co.,* 26 W. R. 434.)

By Settlement Property of the Wife is limited to Trustees upon Trust for her for her Separate Use for Life, with Remainder to her Husband for Life, with Remainder to the Children. With consent of Husband and Wife the Trustees lend portions of the Trust Funds to the Husband on security of joint and several Promissory Notes of Husband and Wife. The Husband is made Bankrupt, and the Trustees are declared responsible for the loss to the Trust Estate. Can the Trustees retain the Income payable to the Wife to recoup the Amount which they had lost?

Sawyer v. Sawyer.

(T. 265; W. N. 35; T. J. 272; L. J. 34; L. T. 298.)

The Court of Appeal, affirming the decision of Chitty, J., said that the property of the wife, though settled to her separate use without any restraint, was not available to make good the loss.

A right of retainer in such a case might have existed against a man of full years, but there was a difference in the case of a married woman, even with regard to property belonging to her for her separate use; and the trustee, whose duty it was to protect the trust fund, could not retain against a *feme covert*, unless he could show that she had given him a right of retainer with full knowledge of the circumstances. All the cases in which the separate estate had been held liable for a breach of trust were cases in which the woman had been the actual actor in the transaction.

(Snell, p. 163; Aids to Equity, p. 36.)

Mrs. P., a Married Woman, made a Will on 19*th January*, 1884, *containing* (*inter alia*) *a Residuary Gift. On the* 26*th of the same month Mr. P. died, having by his Will given the residue of his Property to his Wife who died on the* 29*th of the same month. Does the Property which Mrs. P. took under her Husband's Will pass to the Residuary Donee of Mrs. P.'s Will under the Provisions of Section* 1 *of the Married Women's Property Act*, 1882?

Stafford v. Stafford, Price, In re.

(T. 254; W. N. 32; S. J. 256; L. J. 38; L. T. 282.)

Pearson, J., decided that, looking to the wording of sections 1 and 23 of the Act, section 1 only applied to property which a married woman acquired *while still a married woman*, and consequently that it had no application to property which she acquired under her husband's will, for she was then *discovert*. The old law established by *Willock* v. *Noble* (L. R., 7 H. L. 850), that a wife's will was ineffectual to pass property which accrued to her after the death of her husband was still law, notwithstanding that by section 1 of the Married Women's Property Act, 1882, a married woman is now "capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner *as if she were a feme sole*, without the intervention of any trustee." So the answer to the question is that the property coming to Mrs. P. under her husband's will does not pass under the residuary gift in her will, but passes to her relations as under an intestacy, unless she re-executed the will after her husband's death.

(Snell, p. 356; Aids to Equity, p. 103; Thicknesse on Husband and Wife, p. 197.)

II.—PRACTICE CASES.

[The references under Snow, Stoney and Gibson, are respectively made to the last editions of Snow & Winstanley's Annual Practice; Stoney & Andrews' Judicature Practice, and Gibson & McLean's Practice of the Courts. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

Will the Court on an Originating Summons under Ord. LV. r. 10, *make an Order for the general Administration of the Trusts of a Settlement in a case where no Breach of Trust is alleged, and the Application is made on behalf of an Infant Cestui que Trust?*

Alexander v. Calder, In re Wilson.

(T. 262; W. N. 37; S. J. 257; L. J. 38; L. T. 282.)

Pearson, J., decided, that as an infant was entitled to the protection of the Court, the order *must*, notwithstanding the discretion given by Order LV., be made directing the trusts to be carried into execution under the direction of the Court, and this, though, as in the above case, three of the four trustees and the other beneficiaries objected, and there was no evidence that the trustees had committed any breach of trust. If the order were not made, persons might be deterred, by the fear of having to pay costs, from coming forward as next friends to obtain the Court's protection for infants.

(Snow, p. 581; Stoney, p. 382; Gibson, p. 294; Ord. LV. r. 10.)

Does an Appeal lie as a matter of right from the Judgment given on the Trial of an Interpleader Issue?

Dawson v. Fox.

(W. N. 11.)

In the above case, an interpleader issue was tried by consent by a judge without a jury. The judge refused leave to appeal from his judgment, and an *ex parte* application for leave to appeal was made to the Court of Appeal. But that Court decided that no leave to appeal was necessary,—an appeal lay as a matter of right from the judgment as from any other order of a judge of the High Court; and so our question is answered in the affirmative, whether the trial of the interpleader issue takes place before a judge and jury (see *Witt* v. *Parker*, 46 L. J., Q. B. 450) or, by consent, before a judge alone.

(3 Fisher, p. 1071; Snow, p. 606; Stoney, p. 317; Gibson, p. 108; Ord. LVII. r. 11.)

Can One of Two Executors Sue alone?

Drage v. Hartopp.

(W. N. 17; S. J. 238; L. J. 18; L. T. 245.)

It is laid down in the text-books, that though for most purposes executors have a joint and several authority, so that one can act without the others, yet, for the purposes of suing, they have only a joint authority, and so all must join in bringing an action. (See Wms. P. P. 12th ed. p. 514.) The above case affords an exception to the general rule. Here A. and B. were executors, and A. alone brought an action respecting the estate of which he was executor. The defendant applied for a stay of proceedings until B. was joined as co-plaintiff. A. showed that B. had absconded, and was supposed to be still out of the jurisdiction; and Pearson, J., refused to stay proceedings, and said, that if A. succeeded in proving his allegations, his action could be prosecuted to a termination without the joinder of B.

(3 Fisher, p. 1713; Wms. P. P. p. 514; notes to *Brice* v. *Stokes*, Wh. & Tu. Equity Cases.)

A Plaintiff suing in the Chancery Division joined a Common Law Cause of Action with a Chancery Cause. Will the Court direct the Action and Issues of Fact therein to be Tried by a Jury?

Gardner v. Joy.

(W. N. 31; S. J. 256; L. J. 32; L. T. 482.)

The plaintiff sued the defendant in the Chancery Division to recover, *inter alia*, (1) moneys due to her as a *cestui que trust;* (2) the return of certain goods, and damages for detaining them and for converting them. At the close of the pleadings the plaintiff asked for an order allowing the action to be tried by a jury. But Pearson, J., refused her application, saying, that though the plaintiff would have been entitled to a jury in respect of her claim for damages, yet as she had chosen to couple it with a claim properly triable in the Chancery Division, the judge had, under Ord. XXXVI. r. 3, a discretion, and under the circumstances the action would be better tried without a jury.

(Snow, p. 423; Stoney, p. 383; Gibson, p. 201; Ord. XXXVI. rr. 1—6.)

An Order is made as to the Costs of an Action, the Costs being in the discretion of the Judge. Leave to Appeal from the Order was given. Under what circumstances will the Court of Appeal interfere with the Order made?

Gilbert v. Hudlestone.

(W. N. 21; S. J. 236; L. J. 23; L. T. 262.)

Only when the order violated some principle or was made on a misapprehension of facts; for notwithstanding the judge gave leave to appeal, the Court of Appeal would bear in mind that the appeal was from an order made at the judge's discretion, and would attach the usual weight to the exercise of his discretion.

(Gibson, pp. 33, 244; Snow, p. 677; Stoney, p. 438; Ord. LXV. r. 1.)

A Judge dismisses an Action for want of Prosecution, but without Costs. Can the Defendant Appeal on the Question of Costs?

Snelling v. Pulling.

(W. N. 13; L. T. 244.)

He cannot do so; for by Ord. LXV. r. 1, the costs of an action are in the discretion of the judge, and by sect. 49 of the Judicature Act, 1873, no appeal is allowed with regard to orders as to costs when left to the judge's discretion. Sect. 23 of 4 & 5 Anne, c. 3, gave the defendant in such a case a statutable right to costs, but that section has been repealed by 42 & 43 Vict. c. 59; and even if the principle of the repealed section is preserved by sect. 4 of the 42 & 43 Vict., yet the principle gives way to the provisions of Ord. LXV. r. 1.

(Snow, p. 677; Stoney, p. 436; Gibson, p. 33; Ord. LXV. r. 1.)

An Official Liquidator of a Company appeals from an Order directing Judgment against the Company. His Appeal is unsuccessful. Must he pay the Costs of Appeal out of his own Pocket?

Warne v. The New Battersea Park Laundry Company.

(T. 248.)

Such is the rule. An official liquidator appeals from a judge's decision at the risk of having to pay the costs of the appeal if he is unsuccessful.

(Snow, p. 613; Stoney, p. 405; Gibson, p. 260; Emden's Co. Law, p. 209; Order LVIII. r. 4.)

A Plaintiff in a Foreclosure Action claims Possession as well as Foreclosure, and obtains the Common Order for Foreclosure and also for Possession. The Mortgagor makes Default in Payment. Can the Plaintiff obtain an Order giving him Possession of the Mortgaged Property?

Withall v. Nixon.

(W. N. 17; S. J. 220.)

Pearson, J., decided that as the plaintiff had claimed possession he was entitled to an order for possession, and that the order for possession could be made *ex parte* in the same way as the decree absolute for foreclosure. Compare *Wood* v. *Wheater*, 52 L. J., Ch. 144, in which it was held that when the plaintiff sought for foreclosure only he could not obtain possession of the mortgaged property by means of a writ of possession.

(Snow, p. 259; Stoney, p. 321; Gibson, p. 233.)

III.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Ringwood and Baldwin are made respectively to the last editions of Robson's, Yate-Lee's, Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

What is a "Final Judgment" within the meaning of Sect. 4, sub-sect. 1 (g) of the Bankruptcy Act, 1883?

Faithfull, In re, Moore, Ex parte.

(T. 263; W. N. 34; S. J. 274; L. J. 34.)

In the above case a bankruptcy notice had been issued by a person who had obtained judgment by default of defence in an action for an injunction, and for damages for breach of a covenant contained in partnership articles. The costs in the action had been taxed and a part of them paid, but the damages under the interlocutory judgment had not been assessed at the time when the bankruptcy notice was issued against the defendant in the action by the plaintiff for the balance of the costs. The debtor sought to set on one side the bankruptcy notice on the ground that there was no final judgment within the meaning of the section of the Act of 1883, and the Registrar, on the authority of *Ex parte Chinery* (Law Notes, Vol. III., p. 107), held that the debtor's contention was good. The Court of Appeal, however, decided that the bankruptcy notice must stand. The balance of the costs was due to the plaintiff under a final judgment; to constitute a "final judgment" nothing more was necessary than that there should be a proper *litis contestatio*, and a final adjudication between the parties to it on the merits. The mere fact that there were damages to assess did not prevent the judgment as to the costs being final.

(1 Fisher, p. 772; Robson, p. 186; Y.-Lee, p. 58; Baldwin, p. 66; Ringwood, p. 38, sect. 4.)

If a Debtor in opposition to a Bankruptcy Notice shows that he has commenced an Action to set aside the Judgment in respect of which the Notice was issued, and produces the Statement of Claim delivered in such Action, is the Registrar in Bankruptcy justified in adjourning the matter sine die *on the Debtor giving an undertaking to prosecute the Action with diligence?*

Foster, In re, Basan, Ex parte.

(W. N. 12; S. J. 221.)

The judges of the Court of Appeal were unanimous in holding that the registrar, in making such an order, had acted wrongly in thus adjourning the hearing without any further evidence than the statement of claim, in which it merely appeared that the debtor alleged that moneys were due to him from the petitioning creditor. This was not sufficient evidence, under sub-sect. 1 of sect. 4, "to satisfy the Court that the debtor had a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgment debt, and which could not be set up in the action in which the judgment was obtained." The adjournment should not have been made without some evidence showing that there was good reason for bringing the action to set aside the judgment.

(1 Fisher, p. 772; Robson, p. 186; Y.-Lee, p. 58; Baldwin, p. 66; Ringwood, p. 38; sect. 4, sub-sect. 1, and see rules 120, 121.)

The Official Receiver reports "that the Bankrupts' course of trading for several years past had been of a reckless character. If they were ignorant of their then financial position such ignorance was attributable solely to their own fault in not ascertaining it." Can the Court under such circumstances impose conditions in connection with the Order of Discharge?

Hirsh & Spindler, In re.

(T. 247.)

The Court can do so under sect. 28 of the Act of 1883; for the trading if not *reckless* was at least improvident, and the Court granted the order of

discharge upon the terms of the bankrupt filing an annual account of his net income, and, subject to the allowance of 300*l.*, setting apart half of any surplus until he had paid 1,000*l.* to his creditors.

(Robson, p. 706; Y.-Lee, p. 151; Baldwin, p. 320; Ringwood, p. 128; sects. 28, 69.)

Lybbe v. Hart.

(T. 235; S. J. 239; L. J. 15; L. T. 244.)

The decision in this case (see Vol. II. Law Notes, p. 134), respecting the effect of a disclaimer of a lease on a covenant contained in it against removal of the hay and straw, has been upheld by the Court of Appeal.

(1 Fisher, p. 886; Robson, p. 488; Y.-Lee, p. 455; Baldwin, p. 147; Ringwood, p. 108; sect. 55.)

Will a Debtor, who under a Judgment is bound to pay a certain Debt by Instalments, and who in answer to a Judgment Summons issued under Sect. 5, sub-sect. 2, of the Debtors Act, 1865, admits that he has had Money in his Possession since the Judgment, but that it was Money given to him as a Gift by his Brother, be imprisoned for making Default in Payment after having had the "means"?

Parke, In re, Korter, Ex parte.

(W. N. 12; S. J. 221.)

Cave, J. refused to commit the debtor, holding that money received as a gift was not "means" within the meaning of the Act. The Court of Appeal, however, while affirming the decision of Cave, J., on another ground, viz., that no evidence of the circumstances of the debtor beyond the fact that he had received this money had been given, were of opinion that the Debtors Act in speaking of "means" intended to include all "means," no matter from what source derived.

(Robson, p. 831; Y.-Lee, p. 769; Baldwin, p. 256.)

An Illustration of the Rule in Waring's Case.

Suse, In re, Dever, Ex parte.

(T. 248; W. N. 28; S. J. 258.)

A. and B., bankers in London, allowed the firm C. and D., in Ceylon, to draw upon them at three, four, or six months' sight, for sums not exceeding 10,000*l.* at one time, the drafts to be covered within two, three, or five months, according as the bills were at three, four or six months' sight, by remittances on good London houses, with bills of lading and invoices of the goods to which the remittances refer, attached. If the remittances from Ceylon matured earlier than the acceptances, A. and B. credited C. and D. with interest, and so *vice versâ*, *i.e.*, if the acceptances matured before the remittances, A. and B. debited C. and D. with interest. A. and B. dealt with the remittances as they thought right, keeping a general account with C. and D. Thus matters went on till October, 1883, when A. and B. stopped payment and filed a petition for liquidation. At this time large acceptances by A. and B. for C. and D. were in the hands of third parties, and two remittances for C. and D. to meet acceptances were in the hands of A. and B. still *in specie*, and the trustee in liquidation received two more remittances which were sent by C. and D. before they heard of the stoppage of payment by A. and B. D. (a member of the firm of C. and D.) was of unsound mind, and a letter was received from C. that his estate and the estate of his firm, as far as legally could be, was being administered and wound-up under the insolvency. So that C. and D. were also bankrupt. These being the facts, the question arose, whether the four remittances in the hands of the trustee of A. and B. should, under the rule in *Waring's Case*, be applied for the benefit of the holders of A. and B.'s acceptances. The Court of Appeal held that, though there might be no specific appropriation of the remittances, yet that Waring's rule must be applied; for there was a double insolvency and a double right of proof, and had C. and D. remained solvent, they, as drawers of the bills accepted by A. and B., would, under A. and B.'s insolvency, have had the right to have the remittances still *in specie* applied to meet the bills, or if C. and D. retired the acceptances, they could have insisted on having the remittances delivered up to them.

(1 Fisher, p. 861; Robson, p. 521; Y.-Lee, p. 272; Baldwin, pp. 192, 310; Ringwood, p. 58.)

If Judgment is obtained against a Debtor after Act of Bankruptcy and before Adjudication, can Proof be allowed in respect of the Judgment Debt?

Tollemache, In re, Bonham, Ex parte.

(W. N. 21; S. J. 239; L. J. 22; L. T. 262.)

Not if the only evidence of the debt is the judgment. This the Master of the Rolls laid down as a rule in the above case, where the facts were these: A. in September, 1842, was adjudi-

cated a bankrupt on an act of bankruptcy committed on 2nd August, 1842. On 11th August, 1842, B. obtained judgment against A. There were at the time of the bankruptcy no assets, but A. was entitled to a reversionary interest in property, and so the bankruptcy was not closed. A. died in 1872, and subsequently the reversion fell in, and thus assets became available for payment of A.'s debts. B. being dead, his executor sought to put in a proof in respect of B.'s judgment. There was no evidence of the debt except the judgment, and as the judgment had been obtained after act of bankruptcy to which the bankruptcy related back, the Court of Appeal refused to allow the proof.

(1 Fisher, p. 1013; Robson, p. 296; Y.-Lee, p. 205; Baldwin, pp. 43, 294; Ringwood, p. 157.)

Will the Court approve a Resolution by the Creditors to accept a Composition under Sect. 18 *of the Bankruptcy Act*, 1883, *where the Debtor has been guilty of "Rash and Hazardous Speculation"?*

Young, In re, Young, Ex parto.

(W. N. 12; S. J. 221.)

The Court will not do so; and therefore approbation was refused in this case, where the creditors had agreed to accept a composition in the £ from the debtor, whose insolvency had been produced by his investing all his money in a mining company of which he was director, and the mines of which were undeveloped and produced nothing.

(Robson, p. 807; Y.-Lee's, p. 107; Baldwin, p. 339; Ringwood, p. 48; sects. 18, 28.)

IV.—PROBATE, DIVORCE, ADMIRALTY AND ECCLESIASTICAL CASES.

[The references under Dixon, Coote, Dixon's Div., Browne, Roscoe, Smith's Ad., Smith's Ecc. and Harrison are respectively made to the last editions of Dixon's Probate, Coote's Probate, Dixon's Divorce, Browne's Divorce, Roscoe's Admiralty, Smith's Admiralty, Smith's Ecclesiastical Law and Harrison's Probate and Divorce.]

A., Executor of B., commences an Action to propound the Will in Solemn Form. C., the Defendant, does not dispute the due Execution of the Will, but alleges as a Defence that the Will was obtained by Undue Influence. Who at the Hearing will begin, A. or C.?

Bowles v. Hornblower.

(L. T. 283.)

Butt, J., after consultation with Hannen, J., decided that the *onus* being on the defendant, he must in such a case begin; the execution being admitted, the presumption was in favour of the will.

(Gibson & McLean's Practice, p. 323.)

For the purposes of ascertaining the Liability of Shipowners for Injuries done to Goods or Passengers, how is the "Tonnage" reckoned for the purpose of Section 54 *of the Merchant Shipping Act*, 1854?

The Dione.

(L. T. 264.)

Butt, J., decided that it is the tonnage appearing on the ship's register at the time of the collision which caused the injury.

(E. Smith's Adm. p. 51; Roscoe, p. 54; Newson, p. 108.)

FOREIGN TENURES.

The reports of our representatives abroad on the systems of tenures of dwelling-houses in various countries has been published, but has not received at the hands of an intelligent public that attention and appreciation which it unquestionably deserves. Now that the desirability of leasehold tenures is not only questioned, but, by some, absolutely denied, it becomes surely deeply interesting to ascertain how far the laws of other countries permit or encourage this form of holding; the report is lengthy, replies having been received from our representatives in all the European states, too lengthy to admit of the full consideration of each report *seriatim*, or of the categorical replies to the questions which Lord Granville addressed to our representative.

After a perusal of the whole report, the impression left on the mind is, that other nations of Europe do not, as a rule, possess the peculiar and questionable holding known as "letting land on building leases." At one time, this holding was considered to generally benefit all parties concerned. The lessee obtained land at a rent so low that it well paid him to erect houses, and sub-let them on shorter terms; the lessor got an immediate benefit from the lease in the shape of small ground rents, and an enormous prospective benefit for his descendants when the land with the houses erected by the lessee reverted to them; the plan was favoured by lawyers, who made many and easy guineas out of the numerous houses erected, and pleasing also was

the plan to architects. Now we have changed all that, and there are not wanting signs, and very marked signs, that all parties to the transaction have ceased to regard it with the same favour they formerly did. Lessors find that the houses prospectively belonging to them, are not built with a view to enduring for longer than the length of the term; lessees find that the ground rents demanded are so high as to leave small margin of profit, unless unsubstantial houses are erected; some lawyers and architects still remain in a state of peaceful satisfaction; others are keen enough to see that one large building estate only requires one conveyance, one mortgage, and that the fees for drawing and settling the leases are cut down to the closest limit by the fact that they are so numerous; on the same ground architects find their survey fees and fees for indorsing plans reduced: both not unnaturally ask whether there would not be more business if these plots were each independent freeholds, each holder on every transfer requiring a solicitor and architect whose fees would not be cut down on account of the magnitude of the estate; and small men are asking whether all this would not tend to a diversion of business instead of the present congestion of work in the hands of the large firms. But one man appears to derive substantial benefit from the transaction, the jerry builder; his extinction certainly will not evoke the sympathy of the world.

How far, then, have other countries involved themselves in these difficulties? First in order comes the report from Austria. The houses there, it appears, are freehold, and land is not let on long building leases; leaseholds appear to be unknown, although the law does not prohibit such an arrangement between the parties: moreover, restrictive covenants on a sale are not possible, each purchaser being entitled to make use of his land as he chooses, subject only to police and municipal regulations as to building. Next in importance comes the thickly-populated prosperous Belgium, a country somewhat analogous to our own, the country being too small for its population. Here we find that houses are as a rule freehold property; leaseholds exist only to a very limited extent, and are tending to disappear, but building leases have lately been introduced into Brussels by a French building contractor; restrictive covenants can, it appears, be enforced and damages obtained under the Belgium Civil Code.

From Belgium, a country similar to our own, we turn to Denmark, a country in which the habits and customs of the people are dissimilar; the houses in the country and suburbs being chiefly constructed of wood, some difference in the law must exist. The practice here of purchasing small lots for building purposes is common, the purchaser, however, acquires the whole fee simple; but the leasing of lands for building purposes, as we understand it, is altogether foreign to Danish practice; lands are leased on a tenure for two lives, but any houses erected by the lessee do not belong to the landlord at the end of the term; he must either purchase them or order their removal by the tenants' heirs: the opponents of "fixity of tenure" will indeed be horrified to find that six months' undisturbed possession of a cottage gives the cottager a right to "livfæste," or tenure for two lives. This report is a particularly interesting one from the quaintness of the holdings, but we must be content with stating that on broad principle every man who possesses lands or tenements holds them in fee simple.

In France, as our readers probably know, land is let on building leases, the practice being very similar to our own, restrictive covenants also being binding.

From Germany comes a long report drawn up by an eminent legal practitioner; the result of this report is simply that house property is invariably held in freehold tenure, and long building leases are practically unknown; the reason of this is alleged to be an old German legal maxim "sale breaks lease," that is to say, that if a lessor sold his property the lease was void as against the purchaser, and hence no person would be disposed to erect at his own cost a permanent structure on land held on such uncertain tenure. From Greece comes similar information, dwelling houses are universally freehold, building leases being as yet unknown; in this country, also, the maxim exists that "sale breaks lease," and that the tenant in consequence could be expelled, and would only have a right to recover damages.

The report from Italy does not, in consequence of the great difference in the mode of holding, answer very circumstantially the questions sent with the circular. Some few curious facts, however, may be gleaned. It seems that tenants may redeem the rent by paying a sum equivalent to twenty times the rent, or, in other words, the tenant can compel, as we should say, the landlord to accept a twenty years' purchase; this is indeed to us a confiscatory idea, nor are we, after this, sur-

prised to find that leases for longer than thirty years are not allowed by the law.

In the Netherlands it seems that all property is as a rule freehold, and building leases appear to be almost unknown.

Norway curiously approaches somewhat closely to our own system; restrictive covenants can be enforced; land can be let at an annual ground rent for building purposes for years, or in perpetuity, but if for years, at the expiration of the term there is a considerable divergence from our law, for in Norway the tenant can remove his house or houses; the reason for this of course is that houses there are chiefly built of wood. The law of the neighbouring State of Sweden, however, does not agree with that of Norway; there the tenure of dwelling houses in the country is usually freehold, nor do long building leases prevail to any great extent: in the country, leases are not uncommon for agricultural purposes, but the tenant has the right at the end of the term to remove any buildings erected by him; an extension of our Agricultural Holdings Acts, which would fairly astound their opponents. The only cases apparently in which building leases are used, is for the erection of villas as summer resorts and seaside places; restrictive covenants as to uses are not prohibited, but are very uncommon.

The law of Roumania may be briefly dismissed, that state having adopted the French Code.

The vast empire of Russia requires a long report: in the Baltic Provinces a civil law, based on Roman law, prevails; in Finland the Swedish law prevails, whilst Poland is governed by the French Code. In Russia proper lands appear to be generally freehold, and the system of long building leases does not prevail.

From the northern states of Norway, Sweden and Russia, let us turn to those kingdoms of the sunny south, Spain and Portugal. Between races so distinct, essential differences in their land laws may be at least expected. What then do we find? In Spain the feudal system of tenures was abolished root and branch in 1811, since that date absolute freehold prevails throughout the greater part of the country; a tenure somewhat analogous to leasehold prevailing, however, in a few provinces; the system of long building leases is practically unknown, as also restrictive covenants on sales. In Portugal, also, long building leases are practically unknown, although houses there are either freehold or leasehold.

But two more important countries need claim our attention, Switzerland and Wurtemburg. In Switzerland the English notion of estates in land is not only unknown, but is, to the Swiss, incomprehensible, absolute ownership being the only holding they understand, with the exception of short farming leases; to subject land to periodical and irredeemable payments is illegal as "savouring too much of feudalism." In Wurtemburg real property is sold usually unconditionally, and subject to no reservation of any annual rent: leases for long periods are very unusual, for in this country, also, the maxim "sale breaks lease" appears to prevail, although the report does not so state in so many words.

With the report from Wurtemburg this interesting return closes; we have been compelled to omit all reference to the minor states of Europe, deeming it only desirable to refer to the laws of the more important countries.

The most casual reader will be struck by the fact that, with the exception of France and Norway, long building leases are practically unknown, and that even leasehold tenure is either almost unknown, little used or considerably restricted by the laws of each country. The most fervent supporter of the present system of leaseholds must perforce, after perusing this report, pause to ask the not unnatural question, how far this holding has contributed to the prosperity of this country, and how far it is answerable for the present dissatisfaction of the people at large with the land laws? We cannot, within the limits of this article, endeavour to show why France, Norway and ourselves have alone adopted this tenure so thoroughly, nor how far this tenure has contributed to our prosperity or to the present state of dissatisfaction; we leave each reader the pleasant task of answering this conundrum to his own satisfaction, only reminding him in conclusion that a legal contemporary of high standing and known conservative and constitutional views has pronounced the system of leasehold holding an "utterly absurd tenure."

ON LAW STUDENTS' SOCIETIES.

By a Contributor.

In considering this subject, it will be found best, in the first place, to answer the question, What are the objects and uses of these societies? And having answered it satisfactorily, the real points

at issue must be determined by deciding in what manner those uses and objects are best attained, or, in other words, what is the programme which a model Law Students' Society should propose to itself to carry out?

Let it be first assumed that the type of society which is to be considered is a local one, that its aim is entirely local, and that it is composed entirely of law students residing in a certain town or district; and it will then be found that the society has, for the two main reasons of its existence, the promotion of intercourse between its members, and their advancement in the knowledge of the law.

So far the way is clear; how, then, are these objects to be carried out?

I. The promotion of intercourse between its members.

A moment's reflection will convince any reasonable being that this should be an important feature of every Law Students' Society. It is an enormous benefit to every articled clerk to become acquainted with his fellows; it will help him to rub down any angularities of character which he may possess, and thus help him to become a more capable lawyer; it will smooth away many difficulties which will present themselves after the term of his articles is over, and he has become a solicitor—there can surely be no need to enlarge upon the advantage to a professional man of being on good terms with those who practise in the same town as himself. Above all, he will learn that there are others who know quite as much law as himself, and many who know a great deal more; he will find at once (instead of finding too late) that he is merely an inconsiderable unit in a large population, and not by any means the important personage that he might otherwise imagine himself to be. Indeed, in this respect, one can only compare the difference between a "finished" articled clerk who has been a member of a well-organized Law Students' Society in good working order, and one who has not been a member of one at all, to the difference between a boy who has received a public school education, and one who has been *educated* by a private tutor under his father's roof.

Having then been assured that it is advisable to promote the intercourse of law students, it is time to consider how this may be best effected, and certainly the simplest and easiest way is by holding meetings, a course which, quite naturally, falls within the scope of any Law Students' Society, and is indeed the invariable practice of every Law Students' Society which we have ever heard of. When, and how, and for what purposes these meetings are to be held are matters which belong to the second head of this paper. We merely state the fact that these meetings of themselves promote the intercourse of those who attend them.

But now comes the knotty point:—Is the attendance at these meetings to be compulsory? *The attendance of members at meetings of Law Students' Societies should certainly be to some extent compulsory.* There now, we are quite aware that we have fallen foul of at least one-third of the whole body of English articled clerks, but nevertheless we hope to convince some at least of that number, that our opinion is the right one.

When a child cries for more sweetstuff than is good for it, its mother, we believe, does not give it more because it cries for it. Why? Because she knows what is best for the child, and the child does not know what is best for itself. Nor can it be for a moment supposed that a boy fresh from school, newly articled in a solicitor's office, should be in a position to know instinctively what is the best method of legal education and what factors of that education he may throw aside as useless. For fear of offending such a gentleman by this "odorous caparison," let us vary the simile, and say that a member of parliament who has just taken the oath for the first time can hardly be expected to know as much of the principles of statesmanship as a Cabinet Minister.

But to return to our articled clerk: if the attendance at meetings is not compulsory, although he will most probably join the local society as a matter of course, it is as likely as not that he will not go to a single meeting. He is afraid of going for the first time, as he does not know any of the other articled clerks, not of course being so far-seeing as to wonder how he will become acquainted with them if he does *not* go; or a dance comes in the way; or a football match; or the pursuit of one of the multitudinous hobbies which prance about the world, and occasionally take wings and become Pegasi; and so the first year goes by, and naturally, not having learnt the advantages of Law Students' Societies, he abides by the habits he has already formed, and allows the remaining years of his clerkship to glide on in the same manner. And then the butterfly solicitor emerges from the chrysalis articled clerk, shackled with all the disadvantages we have enumerated, and never able to fly any higher than a gooseberry

bush. Contrast his position with that of a member of a Law Students' Society in which attendance is to a certain extent compulsory, who is bound to go sometimes, and who thus, by merely attending, learns to enjoy the meetings, and in time perhaps to consider it rather a hardship when he is prevented from being present.

To express more clearly the meaning of the words "to a certain extent compulsory," we may say that we think that if twenty meetings are held in a year, every member should be compelled to attend four or five of them. "But this is "monstrous," exclaim the malcontents, at this point; "nobody has any right to compel us to "attend a meeting when we wish to be somewhere "else. We ought to have the benefits of Law "Students' Societies without being subject to "their liabilities. We are free men. This is a "free country."

Precisely: this is a free country. And yet the mere fact of your being born in this country (a fact for which you, certainly, were not responsible) renders you liable to its laws; you are bound to obey them, and as long as you remain in England, you cannot by any means evade your responsibility, however convenient it might be to do so.

A Law Students' Society is a miniature state; it is formed for the purpose of benefiting its members, individually and as a body, and it forms certain rules which it considers will be of service in carrying out this purpose. When a new member is elected, he either expressly or tacitly, but certainly knowingly, subscribes to those rules, and as long as he remains a member of that society he is bound to abide by them. The whole body of law students who have from time to time made, amended, and altered those rules, are supposed to know more about legal education (the phrase is used here in its widest sense) than the novice, in the same manner that the laws of England may naturally be taken to present a better system than any code which could be drawn by an individual. If the unwilling law student objects to abide by those rules, he may leave the society, and as the society only interests itself in those whom it comprises, the student who has ceased to be a member becomes to it a matter of profound indifference, and he himself, as he will find some day, will be the only loser by the transaction.

Enough has been said to show that compulsory attendance is advantageous, but there is just one other way, which has not yet been mentioned, in which the system operates as an indirect, though a decided, advantage. It is natural that compulsory attendance should have as its result well-attended meetings; well-attended meetings conduce materially to the welfare of the society; and there cannot be a doubt but that the usefulness of the society increases in direct proportion to its prosperity.

II. What means should a Law Students' Society use to instruct its members in the knowledge of the law?

1. Debates.—Here another question arises:—Are the debates to be exclusively on legal subjects, or are debates on points of general interest to be introduced? It is a very difficult question to answer. On the one hand, young members of the society are much more likely to attend a meeting at which a point is to be discussed, which is well within their comprehension, than a debate on some abstruse moot point; on the other hand, it may justly be urged that the articled clerk of two or three years' standing, to whom the Law Students' Society *should* be of great use, has some right to complain, that, as far as legal knowledge is concerned, it is a waste of an evening for him to attend a meeting which is to discuss some subject which has nothing whatever to do with law, and which might well be threshed out in half-an-hour's desultory conversation. To instance the wide divergency of subjects which may be met with, it would not be at all surprising to find in a syllabus of meetings two such debates as the following in close juxta-position:—A debate on the highly technical point which is involved in the recent case of *Burdick* v. *Sewell;* and:—"Is horse-racing immoral?" Extremes meet here with a vengeance, but the picture is not over-drawn. The difficulty is not to be solved by any such cutting of the Gordian knot as this. Here, as in every other question, *in medio tutissimus ibis*, and, keeping steadily in view the main objects of a Law Students' Society, we should recommend that subjects of "general interest," as they are called, be altogether banished from the list, and that the debates of exclusively legal interest be varied by what may be called legal-general subjects. A discussion on the amalgamation of the two branches of the profession will interest and "draw" recently-elected members of a society quite as much as a debate on the morality of horse-racing, or the propriety of abolishing the House of Lords. There are many subjects of this nature which instantly present themselves to the mind; for example, the

system of service under articles, the establishment of a legal university, the examinations of the Incorporated Law Society, or even the very subject of this paper. A glance at the report of any annual provincial meeting of the Incorporated Law Society will supply two or three more subjects, and, in addition to these, there are always others which are at the time prominently before the public. It must never be forgotten that a Law Students' Society *is* a Law Students' Society, and that there is no earthly reason for a body of law students to imagine that they have a special mission to discuss moral and social reforms.

In connection with debates, there is an institution much in favour with many societies, towards which it will be as well to cast a glance. We allude to what is generally known as the "mock trial."

The mock trial, in its original form, is merely an elaborated debate, with its subject well thought-out beforehand, and with an appointed judge, counsel, plaintiff, defendant and witnesses. So far, so good. The result is always so uniformly successful, that the students are emboldened to ask their friends to witness these mock trials, which, as a rule, are only held about once a year. Still, so far, so good. It is quite right that the society should let the outside world know of its existence; and they could not find a better way of doing it than this. Then, the mock trial is moved to the County Court, or some other room larger and more convenient than the one in which the usual meetings of the society are held. More people from the outside world are present, and then the members of the society begin to find that their audience do not take so much interest in the legal points which are raised, as they themselves do. So they introduce a few jokes into the course of the trial, dress up the witnesses, and make their characters more pronounced. There is no harm in flavouring cold mutton with a few pickles; but when a large amount of pickles, and an infinitesimal portion of cold mutton, are partaken of, the meal is not a very substantial one. The mock trial in its final development is brimful of jokes, and puns, and wit, and clownishness, to the exclusion of all law whatever; it is the audience alone which is considered in getting up the entertainment, and *hinc illae lachrymae*.

When the mock trial has reached this stage, it is time that it returned to its primeval simplicity. We have no objection whatever to a Law Students' Society giving an annual entertainment to its friends; but we would suggest that private theatricals would not only be more amusing to the audience, but would also afford more scope for the histrionic abilities of the performers. Nor have we any objection to a Law Students' Society calling its friends together to show them that it has made progress in its studies, and that it knows something about law; but it must be patent to the meanest capacity, that a mock trial, in the form we have indicated, is not by any means fitted for that purpose.

To the Law Students' Society which has not yet originated mock trials, we say: "Do so by all means; they are very amusing; they are very interesting; and they will do you a great deal of good; but take warning by the above history, and keep them well within bounds." To the society which possesses mock trials that have not yet reached their final stage of development, we say: "Whatever you do, do not allow them to reach that stage." And to the society, the vegetation of whose mock trials has already grown thus rank and luxuriant, we say: "Reform."

2. Second only in importance to the debates, stands the library, which should be a permanent institution in every Law Students' Society. But here, again, we may say, from the experience which we have had of these libraries, a reform is needed. In the first place, it may be taken for granted, that the greater part of the surplus funds of the society are, or should be, expended on the purchase of books.

The majority of Law Students' Societies' libraries consist of a heterogeneous mass of books, which have been collected together according to the individual fancies of various members of the society. A large number of them are of no use whatever to the members of the society as a body. For instance, Mr. A. B. wishes, for some particular reason, to read Smith's Law of Negligence; he does not care to buy it, so, as by far the easiest method of getting hold of it, he proposes that it shall be added to the library of the Law Students' Society, of which he is a member; nobody has anything whatever to say against the book, though, perhaps, some may have a vague consciousness that it is rather a waste of money; however, the odds are that the book is passed, and after Mr. A. B. has read it, it peacefully reclines on the library shelves, in a state of inglorious rest, for ever and for aye.

On the other hand, Mr. C. D., who is going up for his final in three months' time, wishes to read

"Baldwin's Bankruptcy;" so he hies him to the Law Students' Library, and asks for it. The library possesses the book, of course, but Mr. Smith is reading it at present, and Messrs. Brown, Jones, Robinson, Roe, and Doe have put their names down for it in succession, so farewell to any chance of the library being of the slightest use to Mr. C. D.

A law students' library, to be of the maximum amount of benefit, should be constituted as follows:—The society, or better still, a special committee of the society, should recognize certain books as being necessary for every law student, and the library should contain two or three copies of each of these—for a small society two would be sufficient, but the flourishing average-sized society should buy three; the society, or its committee, as aforesaid, should also recognize a second class of books which would be read only by the student for honours, and invest in only one copy of each; except for very good reason indeed, they should sternly refuse to recognize any other books but these as being necessary for a law student's library; if the student wishes particularly to get up the law of negligence, or the law of domicile, or any other special branch of law, let him invest in the books which he finds necessary for his purpose, himself.

3. The importance of lectures must not be underrated, though, at the same time, a great distinction must be drawn between desultory lectures on miscellaneous subjects, and a systematic course. Everyone can appreciate the difference in value between desultory and systematic reading, and the same line of reasoning is applicable to lectures. Indeed, we may go so far as to state our opinion that a single lecture on any subject can be productive of no good whatever, except in so far as it may be the means of inducing a hearer to go more deeply into the matter. On the other hand, a course of lectures, regularly attended, may be of enormous benefit to the diligent student. Here again, however, there is a difficulty in the way; any good-natured solicitor, who is capable of doing so, will be glad to deliver a lecture to the Law Students' Society of his town; but no solicitor, however good-natured, would agree to give a course of lectures in cold blood, even if capable of doing so, without a *quid pro quo*. So that this is really a matter for the consideration of each society individually; if the funds of the society will admit of its doing so, we should advise it by all means to engage a lecturer to give a course of lectures each session to those who cared to attend them; if the funds of the society are not in this beatific condition, let it go on prospering till they are.

4. One more feature of a Law Students' Society which will conduce to the advancement of its members in the knowledge of the law, and we have done. It is most advantageous for the articled clerk to note down knotty points which occur in the course of his reading, and to bring them before the meetings of his society for elucidation. This plan is in favour with some societies, but not, we believe, with all; its benefits are incalculable, both to seniors and juniors; the seniors can be of great help to the juniors in explaining away their difficulties, and among themselves a few minutes' discussion will wonderfully clear up a doubtful point, which, though of some intricacy, is not of sufficient importance to be placed on the list of debates.

In conclusion, we would urge upon every law student the importance of taking as much interest as he can in his society, as by doing so he will conduce materially to the welfare both of the society and of himself.

HOMICIDE.

II.

(*Continued from p.* 21.)

It is very difficult to lay down any clear and comprehensive definition of what legally amounts to a "killing." A man's death is, as a rule, the result not of one cause only but of several causes, and these causes are always more or less obscure, more or less complicated, and oftentimes so closely related between themselves that it is impossible to take any one cause alone and try to estimate to what extent it has contributed as a distinct and separate factor to the result. Thus, though a human agent may be one of the factors of the sum total of causes which has caused the death of any person, it is not always possible to say that he has killed that person. The question of killing then resolves itself into one of cause and effect and of the relation between these two. Let us for a while inquire into this relation with regard to the connection which may exist between causes of death and the result which follows them.

We may take first of all a very simple case. A. deals a blow to B. which results in the death of B. instantaneously. The medical evidence shows that B. was at the time of the blow in perfect health,

and that the direct and only cause of his death was the injury caused by the blow. Here there can be no doubt that A. has killed B. Now let us introduce an element which will render the case one not so easy to deal with. Suppose B. does not die immediately, but lingers for a more or less extended time and eventually dies; but the medical evidence as before testifies that the immediate and apparent only cause of death was the blow inflicted by A. Now medical science tells us that death may occur as the result of an injury years after the injury is suffered. For instance, there is the case of a certain Andrew Jackson, who was wounded in a duel, and the wound so received resulted in his death many years after the duel. Can time be admitted as a factor to lessen or entirely take away the responsibility of A. for B.'s death? Logically, if B.'s death is the result of A.'s act the latter's responsibility should remain unaltered, whether B. dies sixty seconds or sixty years after the infliction of the injury. His act is the cause of death, and the cause of an effect remains a cause, whether it operate instantaneously or after a protracted interval. But here reasons—arising out of the peculiar constitution of the cause, a human being (for a human being has feelings to be taken into account),—out of considerations of a social nature (for it would obviously be unbearable that a man should live under the incubus of the uncertainty as to whether he is or is not liable to be called to account at some distant and uncertain future date for an act committed in times long past, which had no immediate definite result),—and out of the difficulty of obtaining actual proof that death was caused solely by an injury inflicted a long time before the occurrence of the death, and that no additional cause has meanwhile intervened—have led the law to depart from what would seem a true logical method of applying cause and effect; and accordingly it has fixed a limit of time within which both the cause and the effect must operate. So that to constitute a legal "killing" the injury which causes the death and the death which results as its effect must both happen within the limited period. This period has been fixed at one clear year (reckoning the whole of the last day of the year) after the act by which the death has actually been caused. So that if B. died after the lapse of more than a year after A. struck him, A. could not legally be said to have killed him. Suppose, however, B. dies a year and a day and an hour after the infliction of the injury, and his death remains a clear and sole effect of the injury; could it not be said that it is wrong and illogical to say that one hour should make a difference, and that the mere exceeding of the limited period by that hour should bring about the result that A. had not killed B? This objection could no doubt be very reasonably offered; but a similar objection applies equally to all cases in which an arbitrary rule is laid down fixing a time after which, in the interests of society, rights of persons are not to be enforced or their liabilities taken away: the same objection may be brought to all Statutes of Limitation. But it is obvious that if there is to be such a limit of time at all, it must be one which is definitely fixed, for more injustice would arise from vagueness and indefiniteness in this point, than would result from the fixing of any limit at all.

We must first premise that the question of intention has no bearing on the inquiry as to what amounts to a killing. This element only requires to be taken into consideration when it is necessary to establish whether a killing which has taken place is a criminal one or not. For a man may kill another involuntarily, and the fact that not the slightest guilt or responsibility, either legal or moral, attaches to the act or omission which causes the death cannot diminish the fact of his having killed him. Thus, if A. strikes B. with an axe, and B. in consequence of the blow dies, A. has undoubtedly killed B. But he will just as clearly have been the cause of B.'s death if, while he is pursuing his lawful avocation and cutting down a tree, the head of the axe flies off and causes the death of B., who is standing by at the time; though, of course, in the latter case, he cannot be said in any way to be legally or morally responsible for B.'s death.

But we must now enter into the consideration of cases of greater complication. In all our subsequent remarks we will, of course, take it for granted that the death occurs within the year and a day after the infliction of the cause of it. In the case of A. and B., which we have above made use of for the purposes of illustration, the cause of death was clearly the blow given by A. But now let us suppose that the cause of death, though having its primary source in A., brings about the result in some other manner. If B.'s death were caused by a stab from a knife handled by A., or by a pistol shot, or by some other inanimate object used as an instrument by A., this would of course virtually fall within the same category. Such also would be the case if A. set upon B. some unreasoning animal, the natural instinct of which

was to destroy human life. Here, indeed, something extraneous is brought in; for there is the chance that the animal in spite of its nature may not destroy B., and B.'s death in some measure depends upon its volition. But its absence of reasoning powers take away from it all responsibility: it is as much a mere instrument in A.'s hands as a thing without life, and the death caused by it must be attributed to the only reasoning, and therefore the only responsible being, A., who avails himself of its instrumentality. If A. could excuse himself from responsibility on the ground that it was not absolutely certain that the animal would kill B., he might equally as reasonably after he had shot B. excuse himself on the ground that there existed an uncertainty as to whether the powder would explode or not. So if poison is the agent used, and is not forcibly administered, but is merely left in B.'s way, and B. take the poison, and in consequence thereof dies, A. has clearly killed him, though B. himself has contributed to the cause of his own death by voluntarily taking the poison. There is a chance that he might not have taken it. But it may be said that a mere chance of this nature does not affect the responsibility of the person who, though he does not cause death by direct forcible means or personal contact with the person killed, yet exposes him to the effect of some agent which may come into contact with him, and which if brought into such contact will cause his death.

But if the chance is a very remote one, this would no doubt alter the case, as we shall see hereafter. In all cases, however, where an agent is made use of to cause the death it must be a visible tangible one, that is to say, there must be a chain of visible outward circumstances connecting the death with the person alleged to be the cause of it. It will be readily granted that a person's death may be brought about by incorporeal causes set in motion by another. We do not at the present day believe, like our ancestors, in witchcraft, and though we are making great strides in "Psychical Research," we are scarcely yet convinced that the intangible powers of will can operate to cause external and corporeal effects. But it is nevertheless true that death can be caused by immaterial means. We have all heard of a person dying of a broken heart, and though this is only a metaphorical form of speech, yet there is no doubt that death may be caused by grief or other strong emotion. So that a person who by his conduct causes another to die in such a manner is morally answerable for killing him. But such cannot be said to amount to legal killing.

And even where there are external acts which, taken singly, are inadequate to cause death, but which, taken collectively, may and do cause or act as the main cause of it, it is questionable whether the author of such acts can be said legally to have effected a killing. For instance, a husband treats his wife unkindly and is wont to "correct" her occasionally and she dies, not from the effects of any particular injury received, but from his general unkind treatment, which represents the sum total of his behaviour to her. Legally speaking, it is highly doubtful if he could be said to have killed her. And even if she was driven by his conduct to commit suicide, it is questionable if he could be called responsible for her death. There is obviously too much doubt surrounding the matter: the reasons for which the wife committed suicide can never be ascertained with absolute certainty, and it would be highly unjust to the husband to assume that the sole reason for her doing so was his harsh treatment. But here we think a distinction must be drawn. Suppose the cause of the wife's suicide was referable not to a long course of continued acts of harshness and cruelty, where no one act of unkindness taken alone could be said directly to have driven her to the rash deed. But suppose the suicide to have taken place to avoid some particular threat of bodily hurt: suppose A. (the husband) pursues her with a stick to beat her, and she from the apprehension of immediate violence and in order to escape it, throws herself into a river and is drowned; here we think the conclusion will be unanimous that A. has killed his wife; for there is no vagueness as to the connection between A. and the immediate cause of death. If the threat or violence used was of such a nature as to cause a well-grounded fear and a justifiable apprehension of immediate injury—an apprehension sufficient to conquer all reasoning powers of the mind and leave active only the instinct of self-preservation, so that the only thought would be to flee, then A. is as much responsible for the death of his wife as if he had pushed her into the water. And indeed in a case which actually occurred, where the facts were similar to those above stated, it was held that A. was guilty of murder. (*R.* v. *Pitts*, C. & M. 284; and see *R.* v. *Evans*, 1 Russ. 426.)

In the above case fear and water were the two agents used by A. Suppose we take away one of these agents—the water: can a person who merely

by his acts or threats so frightens another that that other dies from the effects of the fright be said to have killed him? Here, again, we verge upon obscure causes. It may, however, we think, be taken for granted that death may be caused by fear, and, if the act which causes the fright be immediately followed by the death of the party frightened, there can be but little doubt that there has been a killing. This view is supported by the decision in a curious case—*R.* v. *Towers* (12 Cox, 530). Here A. unlawfully assaulted B., who at the time was holding C., a baby, in her arms. The assault so frightened C. that, though previously healthy, it had a fit of convulsions, from the effects of which it shortly afterwards died. It was held that A. would be guilty of manslaughter if the jury thought that the assault on B. was the direct cause of the death of C.

(*To be continued.*)

NOTES ON THE FINAL.

There were no less than 80 candidates at the January Final "referred to their studies." A goodly number, in truth, and yet we venture to assert that—with perhaps an odd exception or two—every one of the rejected candidates deserved his fate, for we are convinced that the Law Society Examiners rarely send back a candidate who deserves success.

Why, then, are so many unsuccessful? The cause is not difficult to find. Numbers present themselves, relying almost entirely on the knowledge they may have picked up during articles, with perhaps a perusal of some book of questions and answers during a month or six weeks immediately preceding the examination. Others present themselves without any real *practical* knowledge, relying on what they have been able to gather from their text books. A third set, who have both practical and theoretical knowledge, fail to satisfy the Examiners from an inability to do themselves justice on paper, labouring under inexperience as to what to put down and what to omit—generally, we fancy, erring on the side of giving far too short than too lengthy answers.

Now the Examiners, however leniently disposed they may be, cannot, in justice to others, pass any of those who fall within any of the three above-mentioned categories. As to the first set, men with a mere knowledge of the practice of a solicitor's office, without a good sound knowledge of the law on which the practice is based, are clearly unfitted to be admitted on the rolls. As to the second set, a mere theoretical man is quite as much, if not more, unsuited to act as a solicitor. As to the third set, the Examiner can only gather what knowledge the candidate has from his papers, and if he fails to do himself justice he must blame himself; for why did he not acquire practice in answering questions on paper before he presumed to present himself as a candidate? In these days there are plenty of opportunities afforded him for so doing.

What the Examiners insist—and we think rightly insist—upon, is that no candidate for admission on the rolls shall be allowed to pass muster unless he shows on his papers that he has during the five or three years, as the case may be, acquired a general practical knowledge of the duties of a solicitor, and that he has also acquired from his text books and from the cases and statutes a sound knowledge of all the leading principles of English law. That the Final Examination is at the present time conducted in such a way as to pick out the proper men we are firmly satisfied. There is, however, one improvement we would suggest, and that is, that before postponing a candidate the Examination Committee of the Society should call him before them and see whether or not he has sufficient knowledge, &c. We mention this because cases come before us in which we are satisfied that a candidate who has not done justice to himself on paper would have been allowed to pass at once had he been examined *viva voce*.

It must not be supposed that we are in favour of a *viva voce* examination: far from it. We believe that written answers are by far the best test in the great majority of cases; but before a man is postponed—and many candidates feel it a disgrace to be referred to their studies—the examinees should be called before the Examiners, and a few theoretical and practical questions put to them. One day would suffice for this extra work, and all chance of improperly rejecting a candidate would be gone.

We have had complaints made to us that during the January Final Examination the room was not nearly so quiet as it ought to have been. Once before we had to call attention to this matter. We would call on those responsible to inquire into the question and see if there is any foundation for the complaints which reach us, and, if there is, to take steps to prevent any recurrence of the evil. There is, of course, absolutely no excuse for the grievance if it exists.

At the Honors Examination, of 59 candidates 17 only succeeded in obtaining a place in the list. Of these, 3 were placed in the 1st class, 8 in the 2nd class, and 6 in the 3rd class. We give below the list itself.

We were sorry to find that the old plan of giving the 2nd and 3rd class lists in alphabetical order is

continued in. The reasons of our objections to the plan have been so often stated that we refrain from repeating them. We may, however, add that one of the successful 2nd class candidates at the January Examination expressed to us a strong wish that the 2nd class list had been in order of merit; he, not unnaturally, would have liked to know whether he was 4th, 5th, 6th, 7th, 8th, 9th, 10th, or 11th. If 4th, his position would be admitted by all as excellent, and some one of course was 4th. It may be reasonably asked, Why do those responsible in the matter object to place the 2nd class men in order of merit? We will not for a moment suppose that it is to save the trouble of fixing the exact place of each candidate, and yet this is really the only reasonable solution. Time enough and to spare is taken in bringing out the list to admit of the extra labour. An additional fee is now paid by the Honors candidates, and the time has arrived for making the alteration which we suggest, and which is clamoured for by those who are most nearly interested in the matter.

The next Final Pass Examination is fixed for Tuesday and Wednesday, April 21st and 22nd, and the Honors Examination will be held on the Friday following, April 24th. The last day for giving notice, leaving articles, &c., is Monday, March 9th, and for renewed notices, Tuesday, 7th April.

Anyone whose articles expire on or before 21st May can—unless for some reason his examination has been postponed—be examined at the April Examination, and, of course, at any subsequent examination.

The Trinity Final Pass Examination is fixed for Tuesday and Wednesday, June 16th and 17th, and the Honors Examination for the Friday following, June 19th.

The following is a list of the gentlemen who passed the January Final Examination:

O. E. Ager, A. E. S. Akaster, F. Armitage, R. F. Arthur.
E. Banting, G. H. Barnes, E. G. Barrett, R. B. Batty, F. W. Bayley, E. N. Baynes, W. Beer, B.A., W. G. Bell, F. J. Bendall, A. Blackburn, E. J. Blake, R. J. Bonning, E. H. Boone, J. Booth, T. Bore, A. J. Bromham, H. S. Brooker, A. F. T. Brooking, H. C. Brown, A. E. Burton, F. E. Burton, F. E. Bushell, H. C. Butlin, B.A.
C. Candler, A. E. Carr, T. F. M. Cartwright, J. O. Cash, B.A., W. Casper, M. Cave, H. F. W. Chandler, W. A. Cheetham, A. W. Chubb, G. H. Clark, A. Clarke, D. Cochrane, G. W. Colenutt, E. A. Collins, S. F. Cotton, B.A., H. E. Cox, S. M. Crosfield, W. J. Cross, W. F. Cunliffe, B.A.
F. A. Daubeny, B.A., F. H. Dauney, V. B. Davies, W. Dawson, B.A., F. W. Deeley, C. C. Dobson, R. B. Dods, H. A. Druce, C. T. Dunn.
F. H. T. Easton, B.A., G. J. L. Ellis.
W. H. Facon, E. Farrer-Baynes, H. W. Farrer, W. F. Farrer, B.A., F. S. Foley, H. S. A. Foy, J. W. C. Frere.
J. Gay, G. C. Geach, A. Geipel, T. H. Gill, B.A., LL.B., W. Godden, B.A., F. S. Goode, J. R. B. Gregory, H. E. Griffith, E. J. Gunner.
T. Hadley, A. Hammond, T. W. Hargraves, J. Hastings, J. W. Hattersley, J. F. Hawken, W. A. E. Headley, P. K. Heard, A. H. Hewitt, T. W. Hicklin, H. A. Highley, J. S. Hilton, G. W. Hodgson, E. Hollinshead, W. T. G. Hooper, A. Horrocks, A. Howe, J. M. Howell, H. A. Hughes, H. H. Humphreys, W. J. Hunter, B.A.
A. J. Isard.
A. Jackson, H. Jeddere-Fisher, B.A., A. H. Jenkin, W. A. Jennings, R. B. Johns, L. H. Jones.
J. H. Kean, H. T. Kearsey, W. C. Keatinge, F. W. H. Keith, B.A., W. Kelsey, C. F. Kennedy, H. T. F. King, B.A., W. W. King.
J. N. V. Leeder, C. A. Lidgey, H. S. Little, B. H. Lomax, H. W. Longden, G. A. Loveday, B.A., R. H. Lunnon.
G. E. H. Maggs, W. McKay, T. W. Markland, J. Mathers, F. G. Mayhew, J. S. Merton, G. C. Mesnard, P. J. Metcalfe, A. M. Michell, R. G. Middlemiss, P. J. Miller, E. A. Morgan, F. Moss, W. Moss, J. H. Mossop, W. H. Murton.
E. J. Neville, R. A. Newill, W. E. Newman, F. H. Nicholson, H. Nield, R. Norris, W. A. Norris.
C. E. Parkinson, W. H. Patterson, B.A., H. A. H. Payne, D. Pennington, A. B. Pettitt, E. H. Pollock, A. Pope, R. W. Potter, D. Powell, A. E. Priddin, C. R. Pugh, B.A., J. B. Purchase.
C. S. Rashdall, B.A., A. J. Reed, W. E. Richardson, J. K. Riggall, J. F. W. Ritson, F. A. Roller, J. H. Rook, T. J. Rowland, T. L. Rowse.
G. J. Salmon, R. Salomonson, F. Samuelson, H. G. Sapte, J. A. S. Scott, C. J. R. Scudamore, J. R. P. Seely, J. E. Shearman, W. M. Shipman, B.A., W. L. Shipton, T. W. Smith, G. E. Solly, M.A., H. H. Spink, J. W. Stanton, F. W. Sturley, A. Summerson, W. J. Swainston, B.A.
H. Teale, H. A. Thomas, G. C. Thomson, B.A., J. J. Titley, J. C. Todd, G. L. C. Turner, J. R. Twisden, M.A., W. E. Tyer, M.A. W. Vant.
T. Ward, J. J. Washington, A. Watling, H. G. Watts, F. Webber, W. A. Weightman, E. F. Weldon, B.A., T. H. Whiteley, C. Wigan, B.A., H. G. Wilkinson, W. M. Willcocks, E. T. L. Williams, B.A., J. Wilson, S. Wilton, W. Wing, T. G. Wintle, H. Woodhouse, B.A., LL.B., J. F. Wreford, B.A.
A. W. Yearsley.

JANUARY HONORS LIST.

First Class.

(In order of Merit.)

Maggs, George Edward Hindley (Dewsbury). *Clement's Inn and Daniel Reardon Prizeman;* value altogether about 35 guineas.
Chandler, Hugh Frank Wills (Basingstoke). *Clifford's Inn Prizeman;* value 5*l.* 5*s.*
Howe, Albert (Sheffield). *New Inn Prizeman;* value 5*l.* 5*s.*

Second Class.

(In Alphabetical Order.)

Batty, Robert Bradshaw (Manchester).
Cochrane, David (West Bromwich).
Metcalfe, Percival John (Stamford).
Pope, Alexander (London).
Richardson, Walter Edward (Leicester).
Shipman, Walter Mace, B.A. (Manchester).
Smith, Thomas William (London).
Willcocks, Walter Morgan (London).

Third Class.

(In Alphabetical Order.)

Hooper, William Tom Glass (Exeter).
Moss, William (Leeds).
Nield, Herbert (London).
Salomonson, Rudolph (London).
Scott, James Alfred Speirs (Newcastle-upon-Tyne).
Tyer, Walter Edward, M.A. (London).

NOTES ON THE INTERMEDIATE.

The number of candidates postponed at the January Examination—no less than 81—is really astounding, looking at the straightforward character of the questions set. The result testifies one of two things, either that the standard of marking is much more strict than it has been, or that the candidates are less diligent—possibly a little of both these elements prevails.

We have done our utmost to warn students for the Intermediate, in these columns, in books written by us for the guidance and assistance of Intermediate Students, and personally, of the serious disadvantages which attend a candidate who is postponed at his Intermediate; once postponed, for some reason or another, he has afterwards a greater difficulty in passing than he would have had had he gone up properly prepared for his first trial, and not only does he find that the Intermediate becomes a serious stumbling-block to him, but his difficulties in passing the Final appear to be equally increased.

We know from personal experience that many articled clerks fail at their Intermediate, who, had they been properly advised as to and prepared in their work, would have gone through the examination with flying colours at the first attempt. Over and over again does this result come before us. Who is to blame for it? The clerk himself, of course, more or less; but when the majority of articled clerks present themselves for their Intermediate, they are at that enjoyable age that, unless the matter is put kindly yet plainly before them, they will not take the trouble and pains to do the necessary work to insure success at what is really a difficult examination.

The "onus" in this difficulty is clearly on the solicitor to whom the clerk is articled. He should see that genuine work is being done by each of his articled clerks during the twelve months immediately preceding the Intermediate Examination, and if he finds that progress is not being made, he should either lend assistance himself, allotting so much work for each week, asking questions, setting questions on paper and correcting the answers, or, if he has not the time to do this himself, let him take care that his articled clerk is placed under some one who will see that the proper course is taken, to save the disgrace of having his clerk postponed. Candidates for the Final generally fully appreciate the difficulties which lie before them, and take steps themselves to meet the difficulties in the best possible way; but this forethought cannot be expected from articled clerks at the Intermediate stage, and the sooner that principals awake to the responsibility which rests with them in the matter the better. It is little short of a sin for principals, who, wishing very likely to get all the office work they possibly can out of their articled clerks, tell them that the "Intermediate is nothing; they can get up the necessary knowledge for it in a fortnight, and that what they learn in the office will be more useful to them at the Examination than a knowledge of Stephen."

The next Intermediate will be held on Thursday, April 23rd, and the last day for giving notice is Monday, March 23rd, and for renewed notices, Wednesday, April 8th.

The Trinity Intermediate will be held on Thursday, June 18th.

The first Examination at which candidates for the Intermediate Examination can present themselves, is that which takes place after the expiration of half the term of articles; and the rules require that the Intermediate be passed within a year after the half-term expires. Consequently, if A. is articled on 1st December, 1882, for 5 years, as his half term (2½ years), will expire on 31st May, 1885, he can present himself next June, but not before, and he must pass either in June or November this year or in January or April next year, otherwise his Final Examination will be postponed; for if he did not pass until June, 1886, he would not have passed within a year after the expiration of his half-term of service.

The Law Society has been again petitioned to award honorary distinction at the Intermediate Examination. The petition has been refused. At one time we were very strongly of opinion that honours should be awarded to the deserving at the Intermediate, and we still favor the idea; but we see plainly that there are objections, and before the suggestion could be adopted it would be necessary to make some alteration in the plan of the Examination work. And bearing in mind that the Examination based on Stephen's Commentaries is affording great satisfaction, it would be a thousand pities to alter the existing state of things. We see every day the advantage which is gained by students being compelled to acquire a thorough knowledge of the principles of the law at an early stage of their articles; and to bring about this desirable result no better book than Stephen's Commentaries can possibly be selected.

The subjects for the Intermediate Examinations of 1886 will not be announced till July. In all probability Stephen's Commentaries will again be the subject selected.

The following is a list of the gentlemen who were successful at the January Intermediate:—

D. Allen, E. D. Atkinson, T. E. Auden, J. C. Auty.

S. D. Balden, E. W. Bartlett, J. H. Beaumont, B.A., F. W. Beck, F. Bedwell, B.A., A. J. Benjamin, G. P. Bingham, H. S. Binney, R. W. Blake, W. G. Blakiston, C. S. Bradley, C. Brady, J. F. Bramah, H. S. Bridge, F. Brown, F. W. Brown, N. W. Brown, R. Burrell, J. Bygott.

T. L. Calvert, H. G. Campion, A. Carpmael, B.A., S. Cartwright, H. St. J. Cavell, R. J. Cay, J. H. D. Chapman, G. W. Clark, B.A., A. E. Clarke, J. Clarke, T. Clarke, W. H. Clarke, H. Clifton, J. S. Cockerton, J. E. Corbould, F. Coulthard, T. H. Cowburn, W. B. Cragg.

P. H. Dagg, W. W. Davies, A. E. Dixon, H. G. Dixon, B.A., G. D. Docker, A. F. Douglas, B.A., C. W. Dunkerly, C. W. Dunn, F. Dwyer, T. J. Dyson, B.A.

T. B. Eastley, G. W. Edwards, J. F. Elgar, E. M. Ellis, A. H. Emanuel, E. W. Essell, E. G. D. Evans, T. O. Evans.

J. B. Farrar, W. A. J. Ford, B.A., A. R. Fowler, J. W. French.

R. H. Gardner, W. G. Geach, W. George, W. M. Gichard, W. Gillow, R. P. Glasgow, E. B. Griffith, R. H. Griffith.

J. Halliday, W. V. Hamilton, A. V. Hammond, R. C. Hankinson, A. G. Harvey, C. E. W. Hawkins, J. J. C. Henry, W. H. Hindle, H. Hodgson, A. Hollowell, B. W. Horne, P. S. Hoyle, A. C. Hughes, F. J. Hunt.

J. C. Jackman, S. P. Jackson, T. W. James, W. C. James, W. O. Jarratt, A. J. Jekyll, H. J. Jelf, R. O. Jenkins, W. H. O. S. Jobson, B.A., E. W. Johnson, Alfred Lewis Jones, Arthur Lancefield Jones, F. V. M. Jones.

J. E. Lambert, C. H. Large, C. F. G. Latham, R. C. Leach, A. Lee, F. L. Lewis, W. T. Leyshon, M. A. Liddle, E. W. Lightfoot, F. R. Locke, E. Lucas.

D. Maclean, E. J. Q. Maggs, C. A. Markham, R. E. E. Matthews, L. L. Maudesley, W. W. Meredith, L. L. Montagu-Marsden, E. A. Morris, B.A., W. L. Munday, G. D. M. Munro.

T. T. Nesbitt, J. W. Newby, P. H. Newill, J. Nichols, C. H. Norris, E. W. Nunn.

F. Ogden, N. Orfeur, J. V. Owen.

J. de C. Paynter, F. Phillips, H. H. Pierce, C. Piper, W. E. Pitts-Tucker, B.A., LL.B., F. J. Poole, W. E. Price, E. B. Prior, A. E. G. Pritchard.

J. L. Quennell.

C. W. Rawlinson, F. P. Richards, G. D. Rigby, C. J. C. Roberts, J. Rogers, J. W. Rowlands, J. S. Russell.

W. J. Scales, L. W. Schmidt, M. L. Sear, R. W. Sheffield, B.A., H. Simpson, F. G. Smith, G. Smith, LL.B., H. Smith, R. F. Smith, B.A., LL.B., R. T. Smith, J. B. Snell, B. J. Spackman, J. W. Spencer, R. J. Stenson, J. A. Stoughton, A. F. Sweet.

E. H. Tate, H. E. Thomas, W. A. Thompson, W. T. S. Tombs, E. J. F. Toser, R. J. Turner.

E. Vaughan.

J. B. Ward, J. L. Waterhouse, H. Watkins, E. H. Webb, T. P. Whately, J. L. Whitaker, D. Whytt, T. Williams, W. C. Williams, W. A. Williams, F. J. Williamson, L. H. Winckworth, W. H. Wise, G. D. Woodward, C. S. Wooldridge, B.A., H. Wyson.

C. P. Yearsley.

THE INTERMEDIATE LAW EXAMINATION MADE EASY;
or (as it is commonly termed)
"GIBSON'S GUIDE TO STEPHEN."

In reply to several correspondents, we beg to state that the 4th edition of this Guide is completely out of print. A new edition is in the press, and will be ready by March 14th. In preparing the new edition, care has been taken to call attention to every alteration effected by recent statutes, and in particular have we incorporated the Agricultural Holdings Act, 1883; the Patent Act, 1883; the Bankruptcy Act, 1883, and the Rules of Court, 1883. The Intestates' Act, 1884; the Settled Land Act, 1884; the Married Women's Property Act, 1884, and the Matrimonial Causes Act, 1884, have also been duly incorporated in the proper places.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Answers to Correspondents.

JAMES BENNETT.—There is not the slightest objection.

W. E. C.—It operates at *common law* because no one is seised to the use of B. The words are used to prevent a *resulting use* to A., which would arise if the conveyance was simply to B. and there was no consideration.

J. L. W.—Snell, 7th ed. (1884), Wms. P. P. 12th ed. (1884), Wms. R. P. 14th ed. (1882). Of the last there is, we believe, a new edition in the press.

F. TAYLOR.—Thanks—we will in future Numbers direct where the bankruptcy cases may be entered in Williams' Bankruptcy.

G. H. T.—Certainly you cannot *rely upon* it as sufficient for your purpose, but as an additional work on the subject you might with advantage peruse it.

J. F. EDELL.—We do not think any written authority could be fairly demanded in such a case, presuming that the solicitor who demands the money acted as solicitor in taxing the costs.

C. E. W. E.—(1) and (2), none whatever.

C. W. LANCE.—It was the book you have.

NODROF.—We think a three months' notice would be necessary.

GLANLLYN.—(1) This section is still in full force; (2) but think not as the document is recorded.

JUSTINIAN.—I. (a) This would be notice; (b) yes; but, II. (a), the sale is void; but (b) we do not think A. would be within the grasp of the criminal law.

P. S. MORRIS.—You must *pass* within one year after half your term of articles has expired, and you ought to present yourself within six months of such half term expiring.

C. S. BRADLEY.—Your case is simple: tell the servant to go about her work quietly, and if she disobeys your lawful command you can dismiss her at once without any further wages than those actually accrued due.

BRATON.—(1) There is no need for any assignment, the original articles govern. (2) He is clearly wrong in mixing up tacking and consolidation, and is not supported by other authorities. (3) We think not. (4) Certainly her consent is necessary.

J. L. HASLEHURST.—Your conclusions are quite right, and the table on the subject is altered in the second edition of the "Aids" to meet the decision in *Curteis* v. *Wormald*.

FEOFFMENT.—They are not.

J. J. STAINES.—To the son's heir. (See *Jones* v. *Hensler*, Law Notes, Vol. I., p. 90.)

W. ARTHUR WALKER.—You forget the decision in *Swift* v. *Pannell*, Law Notes, Vol. II., p. 134; and see the article on the subject in the same volume.

G. E. PAIN.—You can do what you propose, provided you get the consent of your principal to the course.

G. INDUS.—(1) April, 1887. (2) 14th edition. (3) Yes, it is in the press. (4) Apply to the publishers, Messrs. Reeves & Turner, 100, Chancery Lane.

W. A. S. H.—(1) No. (2) Wait for the new edition. (3) Many thanks. We are very glad to know that the alterations are pleasing to you.

J. S. SMITH.—The books are well selected, but if you rely on so few, almost every paragraph will have to be known.

F. H. PEACHEY.—It is only necessary to produce the original writ, if the defendant demands to see it. In such a case the service of a copy would be bad if the original were not produced (see *Goggs* v. *Huntingtower*, 12 M. & W. 503; and see Weekly Notes for 1883, p. 208).

W. RETSBEW.—(1) To B. (2) We think not, the vendor would have to be satisfied with interest on his purchase-money.

REARDON.—(1) & (2). In both cases B. can sue A., but in the second case B. could not recover the presents. The questions are so simple that it is not necessary (if it were possible), to refer to decided cases.

E. H. TURNER.—These numbers are quite out of print, and we are afraid that it is no use advertising for them.

C. P. ROBINSON.—Clearly he can (see Snell, 7th ed. p. 281; and Aids to Equity, 2nd ed. p. 66).

E. G. ROBINS.—Many thanks. We have given the right name in this Number. The error was the printer's, as you will see as the cases are now given alphabetically.

J. E. WALSH.—Many thanks for your suggestions which we will bear in mind.

W. N. V.—(1) You should pass in April or June, 1886. (2) The books will be announced in July next. (3) As to this you had better write to the Secretary of the Law Society.

N. HORROCKS.—Yes, under the new regulations; but he cannot be *admitted* until twenty-one.

SUBSCRIBER.—The Court must appoint a guardian in such a case.

CANTAB.—You cannot well improve on the book you mention.

SUBSCRIBER.—We do not think there is any remedy.

TYRO.—(1) It would seem not. (2) In both churches.

HOLT PERCY.—January, 1887.

A. M. P.—We think that there would be no remedy on the notes. Had not time barred the claims there would have been a remedy against the signing churchwardens. We cannot, however, give you any authority for this.

DENT.—(1) Thanks, but the Court of Appeal does not appear to be of opinion that the case you refer to has settled the question. (2) Notes on the notes would be very useful. (3) He would have no such right, but he could refuse the holidays. (4) Many thanks. We are very pleased to find that the "Law Notes" alterations are pleasing to you.

ALEXANDER HOWELL.—We are afraid that you will not be able to get any reliable information on the difficult query, and so we do not repeat it in our columns.

Correspondents' Answers.

DEPOSIT.

To the Editor of the "Law Notes."

SIR,—I do not think the deposit could be successfully reclaimed. A. is not prevented from carrying out his part of the bargain. He should work the field, and seek for compensation in damages for the loss he sustains through B.'s cattle passing over the potatoes. Compare *Cory* v. *Thames Ironworks and Shipbuilding Co.*, 37 L. J. R., Q. B. 68; *Howell* v. *Coupland*, 43 L. J. R., Q. B. 201.

R. D. M.

Similar answer from Holt Percy, quoting Addison's Contracts, 8th ed. p. 932; Addison's Torts, 5th ed. p. 110. Also from F. W. Martin and G. J. B. P.

Correspondents' Queries.

To the Editor of the "Law Notes."

DEAR SIR,—Do you know of anyone among your numerous readers who intends going up for his Final Examination in April, 1885? If so, I should feel much obliged to you if you would let me know his address, in order that we might go through a course of reading together for mutual improvement, as I intend going up at that time. If possible, I should prefer some one living near my address.

G. E. L.

[We have received a great many other letters, but we feel that we should not be justified in giving any more space to the correspondence columns. We give preference to those letters we think the most proper to be dealt with in our columns, and apologise to those correspondents whose letters we are obliged to put on one side.—ED.]

SUPPLEMENTAL REFERENCES TO TABLE OF CASES.

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Hayward *v.* E. L. W. Co., L. R., 28 Ch. D. 138.
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Hodkinson *v.* L. & N. W. R. Co., 33 W. R. 662.
Jones *v.* Jones, W. N. 1884, p. 17.
Joseph *v.* Lyons, 54 L. J., Q. B. App. 1.
Kensit *v.* G. E. R. Co., 54 L. J., App. 19.
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Mander *v.* Harris, In re March, 54 L. J., App. 143.
May, Ex parte, L. R., 13 Q. B. D. 37.
Montague, In re, L. R., 28 Ch. D. 82.
Oastler, Ex parte, 54 L. J., App. 23.
Parnell *v.* Steadman, L. R., 12 Q. B. D. 104; 49 L. T. 712.
Pearson *v.* Pearson, 54 L. J., App. 32.
Phillips *v.* Beal, 54 L. J., App. 80.
Pooley *v.* Whitham, L. R., 28 Ch. D. 38; 54 L. J., App. 182.
Read *v.* Anderson, L. R., 13 Q. B. 779; 51 L. T. 55.
Reg. *v.* Cox and Railton, L. R., 14 Q. B. D. 153.
Reg. *v.* Garrett, L. R., 12 Q. B. D. 620; 53 L. J., M. C. 81.
Sawyer's Contract, In re, 53 L. J., Ch. D. 1104; 51 L. T. 356.
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Tomlinson *v.* Land Corporation, 51 L. J., Q. B. 561.
Vaughan, Ex parte, In re Riddeough, L. R., 14 Q. B. 25.
Wallace, Ex parte, L. R., 14 Q. B. D. 22.

REVIEWS.

A Summary of the Law and Practice in Admiralty. By T. Eustace Smith, Barrister-at-Law. 3rd edition.—That Mr. Eustace Smith's little work on Admiralty supplies a want is evidenced by the demand for a new edition in so short a time. The second edition was published only in July, 1882, and considering the limited number of students who dip into these outside subjects, this proves that all or nearly all must read Mr. Eustace Smith's book. A third edition never requires much critical review, and this book forms no exception to the general rule. We must, however, express regret that the author has attempted to give the priority of liens in order of attachment. The subject is so difficult that no surprise is caused by the discovery that his list does not in all respects coincide with either Maclachlan's or Newson's Shipping. To our mind Maclachlan's division is the best: firstly, into liens in the nature of rewards for benefits conferred; and secondly, into liens in the nature of reparation for wrong done. The first ranking in the inverse order of their attachment, the latter in the direct order. Again, we must take exception to the statement on p. 87, that before a master is justified in giving a bottomry bond he must first endeavour to pledge his owner's or *his own credit*. We are unable to see that the case cited supports this statement; whereas *Heathorn* v. *Darling*, 1 Moore, P. C. 5; *The Hero*, 2 Dods. 139; and *The Empire of Peace*, 39 L. J., Adm. 12, all go to show that by pledging personal credit the Courts meant the personal credit of the owners only. Possibly the author has been misled by the apparently erroneous head note to *Soares* v. *Rahn*, 3 Moore, P. C. 1; but a perusal of the judgment shows that here the master was himself a part owner, and so pledged his credit as part owner, not as master. We cannot help thinking that, for students' purposes, the author cumbers his book too much with appendices. We would suggest in future editions their omission, being satisfied that not one out of one hundred students reads the appendices. It is published by Messrs. Stevens & Haynes, Bell Yard.

The Complete Annual Digest for 1884. By Alfred Emden, Esq., Barrister-at-Law.—This annual digest was started last year. We had the pleasure of reviewing the first volume this time last year. We can only repeat our opinion of last year, that the work is fairly what it claims to be, a "Complete Digest." It is published by Messrs. Clowes & Son, Fleet Street.

We have also received *Marcy's Statutes*, published by Messrs. Stevens & Haynes, and *Challis' Real Property*, published by Messrs. Reeves & Turner.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. April, 1885. Part 4.

NOTICE.

CASES FOR PRESERVING CURRENT NUMBERS.

Arrangements have been made for supplying Subscribers with Cases for preserving their current Numbers. These Cases are of a new patented design, strong and serviceable, with the Title lettered in gold on the back. They can be obtained on application at the Office of the "LAW NOTES," 27, *Chancery Lane, price 2s. 9d. each, or will be sent post free to any place in the United Kingdom on receipt of a remittance of 3s. The cost is slightly in excess of the charge for the stringed Cases usually supplied for the purpose, but this is due to the novelty of the design still being the subject of a patent. Applications by letter for these Cases should be addressed to "The Sub-Editor."*

SOME NOTES.

A SUBSCRIBER has suggested to us the desirability of confining our Recent Cases to a dozen or fifteen really important decisions, pointing out that our readers would then be able to master and remember the judgments, a task which at present they cannot hope for a moment to accomplish when so many are presented every month for their consideration. As our subscriber may possibly represent the opinions of a class, we think it advisable to point out in answer that the majority of our readers require the cases for noting up in their books; that our cases are even now selected with the greatest care from the mass of decisions of each month, and that we endeavour never to give a case which only follows some previous decisions. Our readers must remember that several most important recent statutes are now receiving interpretation from the Courts, and that numerous important decisions must be expected for some time yet. Moreover, whenever a case decides a new point it is impossible to safely tell a student working for examination that a question will not be asked on it; all cases deciding new points are fit subjects for questions. We have well considered the subject, and think the interests of the majority will be best served by continuing our present practice.

No wonder the people of England think the law of England so bad. The very persons who should lead only succeed in misleading. Listen to the "St. James' Gazette," on the case of *Chester* v. *Powell*. The facts were very simple. A lady desired to take a house. There was some doubt as to sufficiency of the water supply, and the intending tenant had notice that the wells sometimes failed. The owner said there was "an ample water supply." The house was taken, the wells did fail, and then the tenant endeavoured to throw up the agreement, which the Court very properly refused to allow her to do. The tenant had notice of the probable failure; the statement of the owner as to there being ample water supply was mere puffing commendation not amounting to any binding representation; an owner is allowed, as to mere matters of opinion, to exaggerate to any extent as to his property: the question of ample supply is surely a matter of opinion. The "St. James'" most certainly must know that exaggeration is legally allowed to any extent as to mere matters of opinion. The decision was in all respects a most just decision. The "St. James'," however, winds up an adverse criticism of the case with the exclamation that "Such is law!" It is, most learned contemporary, and not such bad law as you seem to think.

So our old old friend, the 5th sub-section of section 4 of the Statute of Frauds, requiring contracts which cannot be performed within the year to be in writing, has emerged from the cloudland of theory into the noontide of practice. In *Bevan* v. *Carr* an agreement was entered into to buy certain shares in a company, and to pay the purchase-money by instalments extending over a period exceeding a twelvemonth. Was this a contract which could not be performed within a year, and so, to be actionable, must be in writing? Mr. Justice Wills had no hesitation in following *Donellan* v. *Read*, *Cheney* v. *Fleming*, and *Smith* v. *Neal*, and as one of the parties could, by handing over the shares, have performed his part of the contract at once, or any time within the year, the contract clearly did not come within the 4th section.

We are constantly hearing a great deal, in fact a little too much, of what the judges think about us. A leading solicitor in the course of a debate in the House of Commons, said he had a great respect for the judges, but there were few men more ignorant of the ordinary transactions of life; for the ordinary affairs and matters of life could not be carried on by the rules they laid down. Just as well for the judges to know what the solicitors think about them. Nothing like a free interchange of opinions.

Cannot our Society do something to stop this unprofessional conduct? We fancy we know friend "Lex;" but then one has to be so very careful in these days of libel. Really the practice has developed enormously, and either we must all be allowed to

advertise, or these breakers of the law must be stopped.

LAW.—Wholesale Traders' ACCOUNTS RECOVERED by experienced Solicitors, without Trade Society office routine or any subscription.—Printed terms on receipt of business card addressed to Lex, 64, Gresham Street, E.C.

The following we have taken from the Albany Law Journal. It exemplifies excellently well an editor's troubles on this side the Atlantic as well:—

"Some busy fellow, who has not the courage to sign anything more than his initials, writes us as follows: 'I have just had time to look at your number of February 14th. In it I find the following, speaking of the scrap-book of Judge Folger: "The editor feels greatly distinguished by being made the recipient of this precious legacy, and when he has done with it and with all other earthly affairs, will deliver it to our Court of Appeals for preservation among its archives." Is the "Court of Appeals" an earthly affair, or not? How, after done with all earthly affairs, will you deliver it?' This is a sample of the letters which an editor gets. Is it any wonder his waste-basket is so full? The first question is of course too absurd to need an answer. As to the last, we answer that we shall deliver the book to the Court of Appeals by will, but we should never think of employing such a critic to draw the will."

In our last Number, in a paragraph on the case of *Read* v. *Thomas*, a stupid error occurred. The words "former" and "latter" got transposed, and the mistake was accidentally passed in reading the proof. The sentence should run, "Mr. Justice Smith simply put the question to the jury to decide whether it was a direct bet or a bet on commission, merely pointing out that in the latter case it was recoverable and in the former it was not."

If many magistrates intend to follow the example of their Leicester brethren we may as well at once repeal the Vaccination Acts. One parent declared that, in his opinion, his child had died in consequence of vaccination, another that permanent injury had been done. The magistrates held this to be a reasonable excuse for non-compliance. The Leicester pundits will probably alter their minds after a severe epidemic in the town.

The next time Dr. Vaughan preaches a special sermon to lawyers at the Temple perhaps he will remember that it is scarcely flattering to his congregation to descant so eloquently on the virtues of the lawyers' predecessors, the good Knights Templars. There was through the whole sermon a most unpleasant undertone of implied comparison not intended to be altogether favourable to his hearers.

Mr. Palmer was a bashful, but at the same time irascible, man. He allowed one, a certain Squibbs, to take his portrait, and so pleased was he with the result that he ordered twelve copies for his cousins and his nephews, his nieces and his aunts. But one day he found his portrait being hawked about the country by a canvasser. He then and there committed an onslaught on his own duplicate physiognomy. Squibbs resorted for redress to the Bridgwater County Court. The judge, while admitting that Squibbs had no right to hawk about the "phiz" without the owner's authority, yet told the original he had no right to take the law in his own hands. For the glass and case his Honor assessed the damages at 7*s.*; for the portrait 1*s.* 2*d.* Insult upon insult! Imagine your feelings at having your face valued at 1*s.* 2*d.* only.

Now we ask anyone, except a judge, what construction he would put on the following printed form:—

"Notice of intention to take proceedings in the County Court for recovery of small debts. I hereby give you notice that unless you forthwith pay the sum of £ due from you to Mr.
I shall proceed against you under the above Act." Signed by J. H. Bedford. Would he not think that the application came from Mr. Blank's solicitor, who, having to get in many debts for his clients, had the forms of application printed? Mr. Justice Mathew and Mr. Justice Smith, however, held that Mr. Bedford was not guilty of an offence under the Solicitors' Act; it was not, said the Court, a question on the document itself, but of the intention with which it was sent out. Now in plain homely Anglo-Saxon, this is simply nonsense. With what intention did Mr. Bedford send the letter out but in the hope of obtaining the debt for Mr. Blank, and something in addition for his letter, or was it Mr. Bedford's intention simply to spend a penny stamp for the fun of the thing? Certainly there is no need for fear that the judges will unduly strain an Act of Parliament to protect the privileges of our profession.

In another case, a supernumerary at a theatre had issued a writ for another person, served it, got a statement of claim drawn, delivered, and, in fact, appeared to have conducted the case, and received various small sums on account of these services. The Law Society took the matter up, and the supernumerary, when pressed, declared that he had got the statement of claim drawn by a man named Thompson, whom he casually met in the Law Courts, and believed to be in some way connected with the law. The Court (Mathew and Smith, JJ.) held that the supernumerary had merely acted as a servant for the other party; as was pointed out, so does a solicitor for his client. However, the Court refused to inflict any penalty,

but expressed an opinion that it was quite proper the matter had been brought before the Court. Very nice, indeed, for our Society; we go to all the expense and trouble of clearing the profession of black sheep and exposing unqualified persons, and all we get in satisfaction is the opinion of the Bench that it is quite proper to bring such matters to their notice. It would surely be quite as proper for the Bench to give us more hearty co-operation in our endeavours.

A Bill was introduced in the House of Lords to remove the disabilities of Roman Catholics as to presenting to vacant advowsons. No particularly new arguments were introduced. The old reasons still appeared to have full force. Let Turk, Jew or atheist, but not Papist, present; and this old stock argument carried the day, and the Bill was withdrawn.

If premises are only inhabited by a caretaker they are exempt under the Inhabited House Duty Act. Supposing the caretaker is a woman, and her son resides with her to take care of her. Will the premises still be exempt? This point arose in *Weguelin* v. *Wyatt*, and the Court had no hesitation in deciding that the Act only allowed one caretaker; or, in other words, only one person on the premises. Caretakers must, therefore, be prepared to lead solitary lives.

Another thumb-crushing railway case has been before the Courts. The old, old story; train full, passengers bundled in anywhere, only standing room, passengers swaying to and fro, one puts his hand up to save himself, door bangs, and fees come into lawyers' pockets. The case appeared similar to *Jackson* v. *Metropolitan Railway*, in which the House of Lords held, overruling the "intelligent persons," as they described the Judges of Appeal, that no action would lie. However there is to be a new trial, and this case may go to the House of Lords; possibly this time they may agree with the "intelligent persons."

In another door-slamming case (*Jones* v. *Great Western Railway*) Mr. Justice Mathew made a pertinent remark on the subject—"slamming was not necessarily evidence of negligence, but it most certainly was not evidence of care." In this case the plaintiff recovered damages.

The Court succeeded in evading a very nice point in the *Queen* v. *Mayor and Corporation of Liverpool*. The Passage Court of Liverpool issued a committal for attachment for contempt in not obeying an order of the Court. Counsel were ready and primed for the battle, whether the Court of Passage possessed this power or not, when the Court came to the conclusion that they did not think any contempt had been committed in this particular case, and so *the* point was shelved *sine die*.

When a right exists to hold a public market, can a Corporation make a bye-law forbidding the sale of cattle till after a certain hour? The Corporation of Wells did; and the Divisional Court has held this bye-law to be good.

Pity it is that Court could not see its way to allow the will of the Rev. William Wight to hold good. How interesting it would have been to have married, as an experiment, an ex-member of Wight's College of Social and Domestic Science for Ladies, having for its object the turning out of model wives? The testator regretted the discomfort and misery consequent on the incompetency of the ladies of England for the discharge of their duties; to remedy this was his great desire. But, alas! the perpetuity rule, the Mortmain Act, and Mr. Justice Chitty have destroyed all our hopes of marrying a socially and domestically scientifically trained lady.

The Court of Appeal considers that if a man is killed by a train while crossing an occupation level crossing, that is, a crossing connecting two fields and not being the public road, although, as proved in the recent case of *Dowsett* v. *London, Tilbury and Southend Rail. Co.*, the deceased had been guilty of contributory negligence, still it is the duty of the driver of the train to keep a good look out, failing which the company will be liable. Do their Lordships think that even if the driver of an express did keep a good look out for all the occupation crossings it would be possible to have the train so under control that they avoid an accident? Occupation crossings are fairly numerous, and if drivers are to be able to pull up at each crossing to avoid an accident, we shall have to travel pretty slowly.

It certainly cannot be pleasant for a well-known horse slaughterer to be jocularly asked "How's the pies to-day?" or to be often requested to send up half-a-dozen to-morrow morning nice and hot. No wonder that unfortunate slaughterer at Retford felt compelled to bring an action against the "Daily Telegraph" for having stated that broken-down horses were consigned by him to London for the meat pie market; to be made into beef, pork or veal and ham pies according to demand, for we have it on Mr. Sam Weller's authority that it is "the seasoning as does it."

The London season approaches. Let aristocratic householders remember the decision in *Watson* v. *Ellis*. If I choose to walk along the pavement and gaze at the stars, and trip over a carriage-mat laid from the door to the carriage, I am legally within my rights, and if I fall and am injured, I have my right of action against the aristocratic owner of that aristocratic carriage-mat. The public have the right to the use of the pavement without any obstruction, and he who for his own convenience places an obstruction on the pavement must take all possible precautions to warn persons, and cannot plead contributory negligence if the injured person was star-gazing. Now that we know we may legally go about London star-gazing we shall certainly do so; if perchance we collide with a lamp-post we shall seek consolation in suing it for damages for our broken nose.

So the great point as to the finality of the architect's certificate under the Metropolis Management Act, 1862, has been set at rest by the House of Lords in *Spackman* v. *Plumstead Board of Works*. The architect's certificate deciding the general line of buildings in a street is final and cannot be appealed. The architect of the Board is now placed by this decision in a most responsible position. It is to be hoped he will only give his certificate in each case after mature deliberation. We like not, however, this ousting of the Courts.

Our brothers of the North concerned in mines and mining will do well to remember that under the Mines Regulation Act of 1872 the "check-weigher" appointed by the men must be some person who at the time of his appointment is also in the employ of the proprietors of the mine. So decided in *Hopkinson* v. *Caunt*. But, ask those unacquainted with the depths of mining law, What is a "check-weigher"? A most important official. A man appointed by the miners to check, in their interests, the amount of coal raised to the pit's mouth, when they are remunerated according to the amount of coal raised.

What are solicitors and articled clerks going to do to vindicate their right to admission at all times to the Courts? The doorkeepers are not to blame, they simply obey orders which they are bound to carry out, and which they do carry out not always in the most pleasant manner. Who is the supreme power in the building? The judges or the head doorkeeper? We would mildly suggest "an unlawful assembly" in Lincoln's Inn Fields of all dissatisfied solicitors and articled clerks, followed by a "rout," and culminating in a "riot" and general attack on doorkeepers. We trust this is not "high treason" or "scandalum magnatum," or some other equally antiquated offence. We fancy that articled clerks might be bought over by the head doorkeeper if he would grant them free admission to *one* particular Court.

In actions, as in all else, fashion claims imperious rule. It seems that before the Durham suit, the petitions for nullity of marriage, on the ground of insanity, had been few and far between. Lord Durham has started the fashion apparently, for only a few days after the conclusion of his suit, a licensed victualler presented a petition for a decree for nullity on the very same grounds. His wife, who had been a barmaid, appeared from the evidence to have been in all respects at the time of the marriage in an exactly similar mental state to the unfortunate Lady Durham. The similarity in the evidence was most striking. In the Durham suit the interest of the public was of course entirely due to the principle involved, and was not a mere morbid curiosity in the doings and sayings of titled persons. The public do not appear to have manifested such intense interest in the second case; this, of course, because the principle had been well discussed in the Durham case, and not on the ground that in the second case the petitioner was a licensed victualler and the respondent a barmaid. Certainly not.

These two cases renew the old controversial discussion as to the desirability of adding insanity and continual drunkenness as grounds for obtaining a dissolution of marriage. The inviolability of marriage ties must not be lightly attacked; but it is fairly open to question whether it would not be as great a kindness to respondent as petitioner: the point is a good debateable subject for Law Students' Societies.

Judgment in *Crowder* v. *Charrington* has been delivered. Mr. Justice Chitty granted an injunction restraining the defendant from describing in his leaflets the plaintiff's music hall as the way to the pit of hell: the judge pointed out that the law allows music halls, and the law also allows crusades against music halls; but in conducting a crusade against a particular music hall you must be careful only to say what is true. Did his Lordship mean that the defendant could not possibly be certain whether Lusby's Music Hall was the right way to that particular pit or not? We suppose the defendant would have been within his rights if his leaflets had merely announced that it was the way to the hot pit.

Why does the "Globe" try to write learnedly about law? Let it confine itself to "wars and

rumours of wars," especially rumours of wars, at which it is particularly good. Says our learned contemporary, "Mr. Justice Mathew did well yesterday in giving costs on the County Court scale only in a number of actions brought for the recovery of less than 50*l*. There is a growing tendency to encumber the High Court with business that might as well come before the lower Courts, and especially is the practice a favourite one when there is virtually no defence, the sole object being to exact costs upon the higher scale. Possibly it may be necessary to go still further in checking the practice, but for the present the refusal of the higher scale of costs may do some good." Does not this paragraphist know that the new rules particularly provide that in actions of contract brought in the High Court for less than 50*l*. only County Court costs are allowed? Does the aforesaid paragraphist think that the lawyers do not know the rules relating to costs? And lastly, does he know why so many clients prefer to have their actions brought in any Court rather than the County Court? If not, let him send us 6*s*. 8*d*. and we will inform him.

Saith the Master of the Rolls, in a recent action, "The bankrupt was a solicitor, and if he acted properly he owed his whole time to his business, although his business was a small one. If a solicitor chose to enter into building speculations, or speculations on the Stock Exchange, or lend money to persons who were engaged in such speculations, he did that which was inconsistent with his duty to his clients as a solicitor, and he wished that the law was that a solicitor should be struck off the Rolls for so acting." Nothing succeeds like success, nor damns so effectually as failure. Had the speculations been successful, his Lordship possibly would have described the same man as an ornament to his profession. But there is another view to the question; surely what is sauce for the solicitor is sauce for the controller of solicitors. Let his Lordship and his learned brothers set us a bright example; let them devote the whole of their time to their judicial duties; let them not be directors of companies, investors in shares, writers to magazines; neither let them buy nor sell with any intention of making profit. They are paid large salaries, and such conduct is inconsistent with their duty to the public as judges, and if the law is to be so severe on solicitors, let it apply equally to judges.

Another judge's pleasant *obiter dictum* during the past month has been to the effect that to call a man a liar is slander, but to call a lawyer a liar is not slander: truly, we now have a pleasant Bench. His Lordship is, however, quite right. Lawyers are *paid* liars; the lies we tell are not our own; they belong to our employers.

CASES OF THE MONTH.

I.—GENERAL CASES.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXVIII., where further details of the case may be found.

The references at the foot of each case under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., and Tudor, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, and Tudor's Conveyancing Cases, and indicate the page at which a note of the decision should be entered.]

Can a Man recover Moneys advanced to his Wife (a) *if advanced before Marriage;* (b) *if advanced since Marriage; and how far does the Act of* 1882 *affect the Question?*

Butler v. Butler.

(T. 316; L. T. 90.)

In this case a man, before marriage, had, at the request of the woman who subsequently became his wife, paid certain debts for her at her request, and after marriage he had paid other sums for her, and lent her moneys in respect of a business which she carried on for her own benefit. For these sums the husband sued the wife, and it was held by Wills, J., that, as to the moneys advanced, &c. *after marriage* (whether in pursuance of a request made before or after marriage), they must be repaid out of the wife's separate estate under sect. 1, sub-sect. 3, of the Act of 1882; but with regard to the advances, &c. made *before marriage*, the learned judge held that the Act of 1882 had not altered the law, and, therefore, that the debt was extinguished by the marriage. Sect. 12 of the Act did not authorize a husband to sue his wife, and sect. 13 could not be held to confer any right of action on the husband. This view was confirmed by the wording of sects. 14 and 15.

(4 Fisher, p. 374; Thicknesse's Husband and Wife, p. 298.)

Are Profits received upon Trust Investments by the Sale of Allotment Scrip distributed to Shareholders to be regarded as Capital or as Income?

Curtis, In re, Hawes v. Curtis.

(T. 332; W. N. 55; L. J. 53.)

Kay, J., decided that such profits are the proceeds of an accretion to the shares, and must be

treated as capital. Consequently, trustees must invest such profits, and not hand them over to the tenant for life.

(7 Fisher, p. 209; Wms. P. P. 12th ed., p. 428.)

If Trustees confide the Management of the Trust to their Solicitor, and thereby a Loss arises to the Trust Estate, are the Trustees liable to make good the Loss out of their own Pocket?

Dewar v. Brooke.

(S. J. 273.)

Most certainly they are, decided Kay, J., in the above case, in which a solicitor, who had assumed the management of a trust estate which was being administered by the Court, went bankrupt, having, it was discovered, misappropriated some 14,000*l.* of the trust funds. It was not the duty of a solicitor to receive the trust funds, and the fact that the estate was being administered by the Court made no difference. Trustees were not authorized to hand the trust funds to their solicitor, and if they did so, they did it at their risk. The principle in *Speight* v. *Gaunt* (L. R., 9 App. Cas. 1; and Law Notes, Vol. II. p. 356) did not apply. It was not even the duty of a solicitor to trustees to receive rents and income, and if allowed to do so by the trustees, and a loss ensued, the trustees must make it good.

(Snell, p. 142; Aids to Equity, p. 36; Underhill's Trustees, pp. 219, 221.)

Dickson, Re, Hill v. Grant.

(T. 331; W. N. 53; S. J. 319; L. J. 50.)

The decision of Kay, J. (see Law Notes, Vol. III., p. 10), in this case has been confirmed by the Court of Appeal. Consequently, trustees cannot, under sect. 43 of the Conveyancing Act, 1881, apply the income of trust funds to which an infant is but contingently entitled on his attaining twenty-one, or on the occurrence of any event before he attains that age, if the interim income of the fund would in any event belong to the residuary legatees. Cotton, L. J., said that "it was impossible to hold that the legislature could have intended to make such an alteration in the law as to take away altogether the income which was given to the residuary legatee in case the contingent legatee should ultimately become entitled to the capital." Fry, L. J., thought that the testator by giving the income to the residuary legatee had, within the meaning of sub-sect. 3 of the above section, expressed a contrary intention.

Where an Order to wind up a Company has been made, and a Liquidator has been appointed, can a Receiver be also appointed?

Giles v. Nuthall.

(W. N. 51; S. J. 304.)

As a general rule, the official liquidator must act as receiver, but in the above case the Court of Appeal refused to disturb Kay, J.'s decision, appointing a third person as a receiver in a case where it was shown that the official liquidator had placed himself in a position of hostility to the debenture holders.

(2 Fisher, p. 666; E. Smith's Co. Law, 2nd ed. p. 62; Emden's Company Law, p. 103; Gibson & McLean's Practice, 2nd ed. p. 308.)

A., in 1875, *assigned to B. by Bill of Sale (by way of Mortgage) all Goods then upon, or which thereafter might be upon, A.'s Premises. In* 1882, *A. gave to C. a Bill of Sale of Goods upon A.'s Premises, some of which had been acquired since B.'s Bill of Sale was executed. C. had no Notice of B.'s Bill of Sale. C. attempted to seize the Goods, but B., being in Possession, refused to allow him. Can C. successfully maintain an Action to recover Possession of the Goods?*

Hallas v. Robinson.

(T. 309; W. N. 45; S. J. 303; L. J. 45.)

On the authority of *Joseph* v. *Lyons* (Law Notes, Vol. II. p. 360), the Court of Appeal decided that B.'s equitable title to the after-acquired chattels must give place to C.'s legal title. C. could not be ousted of the benefit of his legal title by the mere fact of B.'s taking possession. B. was in the position of a person who has bought goods already sold to some one else, and he, rather than C., must suffer for A.'s fraud.

(1 Fisher, p. 1888; 1 Prideaux, p. 723.)

Under the now usual Condition of Sale, permitting the Vendor to withdraw from the Contract if any Requisition with regard to the Title, Quantum of Estate, Conveyance or otherwise should be insisted upon which the Vendor is unable or unwilling to remove or comply with, can the Vendor rescind if the Purchaser insists that the Conveyance shall not contain a Covenant by him to repair a Wall on the Premises purchased, the liability to repair which had not appeared in the Particulars of Sale?

Hardman v. Child.

(S. J. 273; L. J. 43.)

Pearson, J., had no hesitation in deciding this

question in the negative. The property was sold by the trustees of a testator, who had entered into a covenant to keep a certain wall fence on the premises in repair for ever. This covenant came to the knowledge of the purchaser for the first time when going through the abstract. He accepted the title, drew his conveyance in the usual form and forwarded it to the vendor's solicitor for approval. The latter inserted a covenant by the purchaser to repair the wall. The purchaser's solicitor refused to submit to the alteration in the conveyance, and the vendors gave notice that they withdrew from the sale under the conditions; and the question we have set out arose in an action brought by the purchaser for specific performance of the contract and the execution of the conveyance by the vendors without the covenant referred to. Pearson, J., had no hesitation in deciding the question in the negative, and compelled the vendors to complete. The purchaser had a right to refuse to enter into such a covenant, as the particulars of sale were silent on the subject, and the vendors could not under the circumstances withdraw from the contract., The learned judge refused to say whether without the covenant the purchaser would be bound to repair the wall; he would, of course, if the covenant ran with the land. His Lordship expressed regret that a condition allowing a vendor to withdraw from the contract if requisitions were raised by the purchaser, which he would not or could not comply with, was now commonly inserted. Such a condition when inserted only met the case of an objection which the vendor was unable to remove or the removal of which would put the vendor to some very great and unjust expense.

(7 Fisher, p. 370; 1 Prideaux, p. 16.)

If Property subject to a Lease for Thirty-one Years is settled upon Trust to permit A. to receive the Rent during the Remainder of the Term if she should so long live, is A. a Tenant for Years determinable on a Life, or a Tenant for Life determinable on Years within the meaning of Sect. 58 (*sub-sects.* iv. *and* vi. *of the Settled Land Act*, 1882?

Hazle's Settled Estates, In re.

(W. N. 52; L. J. 49.)

The Court of Appeal decided that A. was not within the Settled Land Act, 1882, and so could not accept a surrender of the lease in question and grant a new one.

(Enter as a note to sect. 58 in book on the Act.)

Does Sect. 5 *of the Married Women's Property Act*, 1882, *apply so as to vest in a Married Woman for her separate use Property to which she became entitled in Possession prior to* 1*st January*, 1883, *but which fell into Possession since that Date?*

Hughes' Trusts, In re.

(W. N. 62; S. J. 338.)

Pearson, J., without expressing his own opinion on the point, said that he would follow the decision of Chitty, J., in *Baynton* v. *Collins*, Law Notes, Vol. III. p. 231, by holding that the section did so apply; and a similar conclusion was arrived at by Kay, J., in *Thompson* v. *Curzon*.

(Snell, p. 375; Aids to Equity, p. 106.)

Will the Court ever marshal Assets in favour of a Charity?

Pitt, Lacy & Stone, In re.

(W. N. 61; S. J. 339.)

Yes; when the testator by his will has declared that the assets shall be marshalled. This was decided in *Miles* v. *Harrison* (L. R., 9 Ch. 316), and the rule was followed in the above case, where the following facts appeared: a testator gave all the residue of his property, real and personal, to trustees upon trust to sell and convert, and out of the proceeds, and out of the moneys he should be possessed of at the date of his death, to pay his funeral expenses and his debts, and then to divide the net residue equally between the treasurers for the time being of the following hospitals:—St. Thomas', St. George's, Westminster and Charing Cross; and the testator declared that "his pure personal estate should, in the first place, be applied in payment of the shares of St. Thomas' and Charing Cross Hospitals," the other hospitals enjoying by Act of Parliament immunity from the operation of the Mortmain Act.

The residuary estate was of the value of 7,300*l.*, and of this 2,100*l.* only consisted of personalty. Chitty, J., held that the assets must be marshalled, and that the debts must be paid primarily out of the impure personalty, so as to leave the pure personalty for the charities.

(Snell, p. 292; Aids to Equity, p. 69.)

A., Commission Agent for B., a Jamaica Merchant, orders in his own Name certain Goods from C., stating that they were for a Mark placed in the Name of the Order. The Mark was known to C. as the Mark of B., but A. did not mention that the Goods were bought for B. The Goods were to be sent as A. might direct. A. subsequently directed C. to send the Goods to D., at Southampton, for shipment by a particular Steamer. C. forwarded the Goods to D., and wrote him with Particulars, adding, "Please forward as directed." A. then directed D. to forward the Goods to B. by a certain Steamer. The Bill of Lading was made out in A.'s Name. C. paid the Carriage of the Goods to Southampton. While the Goods were on their way to Jamaica, A. stopped payment, and C., not being paid for the Goods, directed the Shipowner not to deliver the Goods. Had C. under the circumstances the right to stop the Goods in Transit?

Isaacs, In re, Miles, Ex parte.

(W. N. 45; S. J. 306.)

The Court of Appeal decided that he had not. A. had bought the goods as a principal, pledging his own personal credit, and he sold them to B. as a principal, although bound to charge B. the same price as he paid C., plus his commission. When the goods reached Southampton the transit as between C., the vendor, and A., the purchaser, was at an end, and so the right of stoppage was gone.

(6 Fisher, p. 964; Indermaur, p. 88; Shirley, p. 192; and in notes to *Lickbarrow* v. *Mason*.)

Oriental Bank Corporation, In re.

(T. 273; S. J. 289.)

The decision of Chitty, J. (see *ante*, p. 11) was reversed by the Court of Appeal, that Court considering that the term "original owner," used in the company's charter, meant on the occasion of a transfer, the transferor of the shares. It was further decided by the Court of Appeal that the Chancery Division has power to order a company formed by Royal Charter to be wound up under the Companies Act, 1882.

It was also held that a transferee becomes the absolute proprietor of the shares from the entry in the books, or actual deposit at the office of the company of the transfer and certificate, and not from the date of the transfer, and until such entry, &c. the transferor remains liable, and the transferee has no right in respect of the shares.

(2 Fisher, pp. 506, 774; Emden's Co. Law, pp. 42, 135, 184.)

Is a past Member of a Club liable for Money borrowed by the Club while he was a Member, with his Knowledge and Assent, and according to the Rules of the Club?

Parr v. Bradbury.

(T. 285.)

He is, even though he has duly paid all his subscriptions and fees up to the time of leaving the club. So held by the County Court judge of Liverpool, and the Divisional Court refused to grant a new trial of the action.

(2 Fisher, p. 109; Chitty, 10th ed., p. 223; Indermaur, p. 189; Shirley, p. 71.)

Can a Bailiff appointed under Sect. 52 of the Agricultural Holdings Act, 1883, by the Judge of the County Court for District A. levy a Distress on Premises situate outside that District?

Sanders, Re, Ex parte Sargent.

(L. J. 60; S. J. 340.)

The Divisional Court (Cave & Wills, JJ.) held that he could do so. If the bailiff was appointed by some County Court judge, the object of the Act was met, and it was not necessary that he should be appointed by the judge of the district in which the distress was levied.

This case settled a doubtful point to which we called attention, and which we ventured to anticipate would be thus decided. (See Law Notes, Vol. III. p. 48.)

(Sect. 52 of the Agricultural Holdings Act, 1883.)

A., with several others, enters an Enclosed Field in which Dog Races were being held. A., having made several Bets on the Races, was charged with and convicted of having committed an Offence within the meaning of the Betting Houses Act, 1853. Can the Conviction be upheld?

Snow v. Hill.

(W. N. 56; S. J. 322; L. J. 55; T. 325.)

Under section 1 of the Act, "no house, office, room, *or other place*," is, subject to a penalty, allowed to be opened for the purpose of betting with persons resorting thereto; and under sect. 3, "any person who, being the owner or occupier of any house, office, room, *or other place*, or a person using the same," shall open, keep or use the same for betting, is also made liable for a penalty. In the above case the accused had no fixed place

where he made the bets, nor had he any stool nor umbrella where he carried on his betting, but made his bets as he walked about the field. The justices convicted him, but on appeal the conviction was quashed—the appellant had no fixed or ascertained "place" within the meaning of the statute.

(Stone's Justice's Manual, p. 305.)

If A. books Goods with the B. Company to be carried to a Station on the C. Company's Line, and the Goods are Damaged when on the C. Line, what Remedies has A. ?

White v. S. E. R. Co.

(T. 319.)

In the absence of condition he can sue the B. Company for breach of contract, and if he can show that the damage to the goods was by the negligence of the C. Company, he can recover damages from that company. But in the absence of proof of negligence, he has no remedy against the C. Company.

(1 Fisher, p. 2012; Shirley, p. 54; Indermaur, p. 110.)

II.—PRACTICE CASES.

[The references under Fisher, Snow, Stoney and Gibson, are respectively made to the last editions of Fisher's Digest, Snow & Winstanley's Annual Practice; Stoney & Andrews' Judicature Practice, and Gibson & McLean's Practice of the Courts. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

When Application for leave to serve a third Party Notice under Ord. XVI. r. 48, is made, must the Applicant satisfy the Court that he is actually "entitled to," or merely that he "claims to be entitled to," Indemnity or Contribution from the Third Party ?

Carshore v. The North Eastern Rail. Co.

(W. N. 58; S. J. 338.)

The words of the rule are "when the defendant *claims to be entitled to*," &c., and the Court of Appeal decided in the above case that as long as a *primâ facie* case was made out leave ought to be given to issue the notice. It would not be right, and it was not intended, that the Court should, on an application for leave to issue a third party notice, determine whether the defendant was *entitled* to the indemnity or contribution.

(5 Fisher, p. 1840; Snow, p. 244; Stoney, p. 173; Gibson, p. 103; Ord. XVI. r. 48.)

If a Plaintiff sues in formâ pauperis and recovers Judgment, which would in ordinary Cases carry Costs, can on Taxation the Master allow Fees to the Plaintiff's Counsel or Remuneration to his Solicitor ?

Carson v. Pickersgill.

(T. 321.)

The Divisional Court held that Ord. XVI. r. 24, precludes any fees being paid to the counsel or solicitor of a person who sues in *formâ pauperis*, and that the defendant could not be compelled to pay such fees; but that the defendant must pay the costs of the plaintiff's witnesses; and so our question is answered in the negative.

(5 Fisher, p. 1608; Snow, p. 230; Stoney, p. 168; Gibson, p. 70; Ord. XVI. r. 24.)

Judgment for an Account being given in an Action, the Plaintiff wishes to cross-examine the Defendant's Witnesses on their Affidavits made subsequently to the Judgment in connection with taking the Accounts in Chambers. Upon whom, in the first instance, does the Expense connected with the Cross-examination fall ?

Backhouse v. Alcock.

(W. N. 48; S. J. 321; L. J. 47.)

Reading Order XXXVII. r. 21, and Ord. XXXVIII. r. 28, of the 1883 Rules together, Chitty, J., considered that the expenses of taking evidence after trial must be borne, in the first place, in the same way as evidence taken at the trial, and therefore that the plaintiff, under the above circumstances, was not bound to pay, in the first instance, the expenses of producing the defendant's witnesses for cross-examination. The old practice, under which all the expense connected with cross-examining witnesses after trial was thrown on the party desiring to cross-examine, had been reversed by Ord. XXXVIII. r. 28, of the 1883 Rules.

(Snow, pp. 454, 470; Stoney, p. 304; Gibson, p. 192; Ord. XXXVII. r. 21; Ord. XXXVIII. r. 28.)

Where Substituted Service of a Writ has, by Order of the Court, been effected by Advertisement as well as by Personal Service, must the Endorsement of Service show the Service by Advertisement as well as the Personal Service ?

Davies v. Lound.

(W. N. 54; S. J. 305; L. J. 46.)

Kay, J., decided that no indorsement as to the service by advertisement was necessary, provided

the indorsement as to substituted personal service duly appeared.

(5 Fisher, p. 1656; Snow, p. 158; Stoney, p. 131; Gibson, p. 83; Ord. IX. r. 2.)

Gardner v. Jay.

(W. N. 41; S. J. 28; L. J. 41.)

The decision in this case (Law Notes, Vol. IV. p. 71) was affirmed by the Court of Appeal. Baggallay, L. J., said that it would be very inconvenient if a plaintiff by merely tacking in a simple common law demand to an action properly brought in the Chancery Division could acquire a right to a trial by jury, and thus add enormously to the expense.

Can a Party to an Action who has made a sufficient Affidavit of Documents be compelled to answer a general roving Interrogatory as to Documents in his Possession?

Hall v. Truman, Hanbury & Co.

(W. N. 51; S. J. 320; L. T. 82.)

The Court of Appeal unhesitatingly said "no." Fry, L. J., said, to allow such a course to be adopted would be to place the party a second time on the rack as to discovery of documents; and Cotton, L. J., remarked, that to compel an answer to such an interrogatory would be to allow a cross-examination on the affidavit of documents. There might, of course, be a case in which an interrogatory as to some specified document might be permissible, but it is the duty of the Court to watch with care and jealousy the establishment of two methods of obtaining discovery of documents, and a general roving interrogatory would never be permitted. The decision follows *Jones* v. *Monte Video Gas Co.*, 42 L. T. 639.

(3 Fisher, p. 410; Snow, p. 364; Stoney, p. 251; Gibson, p. 162; Ord. XXXI. r. 7.)

Should a Petition or an Originating Summons be used to obtain the transfer of Securities and Payment of Cash out of Court in a Case where the value of the Securities is less than 1,000*l.*, *and the Cash is less than* 1,000*l.*, *but together the Secnrities and the Cash exceed* 1,000*l.*?

Haworth, In re.

(W. N. 48; S. J. 305.)

Looking to the words of Ord. LV. r. 2, sub-sect. 2, Pearson, J., decided that a petition was the proper course in such a case.

(5 Fisher, p. 2013; Snow, p. 575; Stoney, p. 378; Ord. LV. r. 2, sub-r. 2.)

Plaintiff recovers in an Action 822*l.* *Defendant recovers* 919*l.* *on his Counter-claim. Who gets the general Costs of the Action?*

Lund v. Campbell.

(L. J. 57; T. 341.)

The "event" of the action being in favour of the defendant, the Court of Appeal held that the defendant was entitled to the general costs, and that the plaintiff was only entitled to the costs exclusively referable to the issues which had been decided in his favour.

In *Ward* v. *Morse*, 52 L. J., Ch. 524, a contrary rule was laid down, it being held that the plaintiff in such a case got the general costs; that the defendant merely got the costs of his counter-claim.

(2 Fisher, p. 1316; Snow, p. 273; Stoney, p. 442; Gibson, p. 140; Ord. LXV. r. 2.)

An Action for the Administration of the Estate of a Deceased Person is brought by a Creditor against an Executor, who has not proved, but has intermeddled. The Will has not been proved. Will the Court, on the Plaintiff's application, appoint a Receiver?

Parker, In re, Dearing v. Brooks.

(L. J. 47; S. J. 305.)

Applications for the appointment of a receiver in such cases are to be discouraged, Chitty, J., said in the above case, as they are "applications on the way to a grant of probate or letters of administration, and ought to be made to the Probate Division." But in a proper case the appointment can be made under sect. 25, sub-sect. 8, of the Judicature Act, 1873, and in the above case the receiver was appointed, the plaintiff's position as creditor being a sufficient guarantee that the will would be proved, since, unless a proper legal personal representative was appointed by the Probate Division, the receiver could not pay the debt of the plaintiff.

(5 Fisher, p. 1816; Snow, p. 543; Stoney, p. 22; Gibson, p. 179.)

Where an Appellant to the Court of Appeal has been ordered to give security for Costs, and has failed for some considerable time to obey the Order, is the Respondent entitled to an immediate Order dismissing the Appeal for want of Prosecution?

The Washburn and Moen Manufacturing Co. v. Patterson.

(S. J. 272; T. 278.)

Until recently he was entitled to such an order, but the recent practice has been to make an order dismissing the appeal, unless within a given time the security was lodged. And in the above case the Court of Appeal (composed of Baggallay, Bowen and Fry, L.JJ.,) had to consider whether the former or the new practice shall prevail, and so important did the judges regard the question, that before deciding it they consulted with the other judges of the Court. In the end Baggallay, L. J., laid down the following rule:—

In future, when the Court might consider a reasonable time had elapsed without the security being given, an order would be made for the immediate dismissal of the appeal, unless the Court was of opinion that there were extenuating circumstances, in which case the Court would, looking to the circumstances, give a further time. Without laying down that a less period than three months would never be sufficient to make an immediate order for dismissal, an *unexplained delay of three months* would always suffice.

(5 Fisher, p. 1794; Snow, p. 673; Stoney, p. 412; Gibson, p. 257; Ord. LVIII. r. 15.)

Can the Time allowed by sect. 6 of the County Court Act, 1875, to an aggrieved Party to appeal by way of Motion to a Divisional Court, be enlarged by consent of the Parties?

Wells, Birch, Ryde & Co. v. Dobbs and Another.

(S. J. 306.)

It cannot. So held by a Divisional Court composed of Coleridge, L. C. J., and Smith, J.

(Snow, p. 31; Stoney, p. 16; Gibson, p. 262.)

If the Plaintiff gives Notice to the Defendant to inspect and admit Documents, and the Defendant neglects to do so, but at the Trial admits the Documents, so that the Plaintiff is not compelled to call the Witnesses whom he has subpœnaed to prove the Documents, must the Taxing Master allow the Plaintiff the Costs of the Witnesses?

Wicksteed v. Briggs.

(L. J. 60; S. J. 339.)

He must, decided Pearson, J., if, on the taxation, it appeared that the witnesses were really called to prove the documents in question.

(2 Fisher, p. 1378; Snow, 693; Stoney, p. 264; Gibson, p. 194; Ord. XXXII. r. 2.)

A Plaintiff recovers Judgment with Costs. On taxing the Costs can the Taxing Master allow Costs of Notices to inspect Documents and of Attendances in respect of Inspection, whether by the Plaintiff or by the Defendant?

Wicksteed v. Briggs.

(L. J. 60; S. J. 339.)

Pearson, J., held that such costs could not be allowed.

(2 Fisher, p. 1378; Snow, p. 693; Stoney, p. 460; Gibson, p. 194; Ord. LXV. r. 38.)

Will the Court grant a new Trial to a Plaintiff on the ground that an important Witness failed to attend at the Trial?

Weldon v. Neal.

(T. 322.)

In this case the plaintiff alleged that the decision had been given against her owing to the absence of a material witness who had been *subpœnaed* by her, and she asked the Court to grant her a new trial. The Court complied with her request on her showing on affidavit the facts which the witness would have proved and on payment by her of the costs of the abortive action.

(5 Fisher, p. 1936; Snow, p. 474; Stoney, p. 315; Gibson, p. 216; Ord. XXXIX. r. 6.)

III.—BANKRUPTCY CASES.

[The references under Fisher, Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Fisher's Digest, Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

An Official Receiver when acting as Trustee makes an Unsuccessful Application to the Court that certain Moneys, claimed also by a Third Person, should be paid to him for the Benefit of the Estate. Is the Official Receiver liable to pay the Costs of Persons who successfully opposed him?

Glanville, In re, Ex parte The Official Receiver.

(S. J. 306; L. J. 48.)

Following the decision in *Ex parte Angerstein* (L. R., 9 Ch. 479), Cave, J., decided that the

official receiver was personally liable for the costs, but that he was at liberty to repay himself out of the estate.

(1 Fisher, p. 832; Robson, p. 679; Y.-Lee, p. 529; Williams, p. 290; Baldwin, p. 249; Ringwood, p. 152; Sect. 121, sub-sect. 1.)

Salaman, In re, Salaman, Ex parte.

(W. N. 50; S. J. 322; L. J. 46; T. 310.)

The decision in this case (see Law Notes, Vol. IV. p. 17) has been confirmed by the Court of Appeal. In support of his appeal the debtor urged that the Court of Bankruptcy had, under sect. 28 of the Bankruptcy Act, 1883, no power to impose a condition on his discharge on the ground that he had been guilty of rash and hazardous speculation, since what constituted such speculations had transpired before the Act of 1883 was in force, and the section was not retrospective. The Master of the Rolls said that it was the bankrupt himself who applied for his discharge, and if the application was made after the commencement of the Act of 1883, there was no reason why acts done by the bankrupt before the Act should not be considered by the Court. In the course of his judgment, Brett, M. R., remarked that "it was a bad practice for any solicitor to enter into speculations not connected with his business. If a solicitor chose to enter into building speculations or speculations on the Stock Exchange, he did that which was inconsistent with his duty to his clients as a solicitor," and his lordship wished that "the law was that a solicitor could be struck off the rolls for so acting."

If under a Bankruptcy which is being wound up as a small Bankruptcy under Sect. 121 *of the Bankruptcy Act of* 1883, *the Official Receiver, acting as Trustee, disclaims a Lease, can the Court after the Disclaimer order that a certain Sum for Rent be paid to the Landlord for Occupation of the Premises the subject of the Lease up to the Time of Disclaimer?*

Sandwell, In re, Zerfass, Ex parte.

(W. N. 63; S. J. 324; L. J. 56.)

This being one of the cases in which a disclaimer of a lease (which has not been underlet or assigned) may be made without the leave of the Court under Rule 232, Cave, J., held that after disclaimer made he had no power to impose any terms, and consequently that he could not direct any sum to be paid to the landlord for rent. The effect of the disclaimer was, under sect. 55, sub-sect. 2, to free the trustee as from the date when the property vested in him. In such a case, therefore, the landlord must be satisfied with proving for the injury sustained by the disclaimer under the bankruptcy.

(1 Fisher, p. 894; Robson, p. 488; Y.-Lee, p. 455; Williams, p. 253; Baldwin, p. 114; Ringwood, p. 107; Sect. 55.)

Where a Bankrupt is proved to have been Guilty of a Fraudulent Breach of Trust, can he obtain his Discharge?

Singleton and Tattershall, Re, Singleton, Ex parte.

(T. 335.)

In such a case the Court will wholly refuse to grant the discharge.

(1 Fisher, p. 1137; Robson, p. 714; Y.-Lee, p. 140; Williams, p. 84; Baldwin, p. 321; Ringwood, p. 127; Sect. 28.)

A., an Hotel-keeper, in 1881 *mortgaged, by a duly-registered Bill of Sale, his Furniture to B. to secure* 6,000*l. In the same year B. assigned the Mortgage Debt (less* 500*l.) and the Furniture to C. C. subsequently left the Bill of Sale and Assignment, together with a Memorandum of Deposit, with his Bankers by way of Equitable Mortgage to secure certain moneys. The Memorandum was not registered. C. subsequently bought up B.'s interest in the Hotel, and his Equity of Redemption in the Furniture. B. in* 1884 *went bankrupt, the Furniture still being in his Possession, and his Trustee claimed the Furniture on the ground that it was in his Order and Disposition, with the Consent of the true Owners. Will his Claim prevail?*

Parker, In re, Turquand, Ex parte.

(W. N. 44; S. J. 290; L. J. 42; T. 284.)

The Court of Appeal decided that the trustee had no claim to the furniture. The custom for hotel-keepers to hire their furniture was so general that it need not now be proved, and this custom prevented creditors thinking that furniture in an hotel belonged to the hotel-keeper. The custom was established in *Craucour* v. *Salter* (L. R., 18 Ch. D. 30), and the principle of that case applied equally whether the furniture was hired by the hotel keeper, or being his own, was mortgaged by

him, and prevented the order and disposition clause having any application. Consequently the bankers in the above case were held entitled to the goods, and this, though the memorandum of deposit, even though a "bill of sale," was not registered as a bill of sale, for registration of it was not necessary, as it was not dealing with specific goods, but was merely an equitable assignment or transfer of an existing security, and a transfer of a bill of sale does not require to be registered under the express provisions of sect. 10 of the Bills of Sale Act, 1878.

(1 Fisher, p. 949; 1 Prideaux, p. 712; Robson, p. 557; Y.-Lee, p. 397; Williams, p. 208; Baldwin, p. 173; Ringwood, p. 67.)

IV.—PROBATE, DIVORCE, ADMIRALTY AND ECCLESIASTICAL CASES.

[The references under Dixon, Coote, Dixon's Div., Browne, Roscoe, Smith's Ad., Smith's Ecc. and Harrison are respectively made to the last editions of Dixon's Probate, Coote's Probate, Dixon's Divorce, Browne's Divorce, Roscoe's Admiralty, Smith's Admiralty, Smith's Ecclesiastical Law and Harrison's Probate and Divorce.]

Clark v. Clark.

Can a Covenant contained in a Separation Deed between Husband and Wife, that the Wife will not take proceedings to compel the Husband to live with her, be pleaded as a defence to a Suit for Restitution of Conjugal Rights?

Formerly it was held that such a covenant was against public policy, and it was not allowed to be pleaded in the Ecclesiastical Courts as a defence to a suit for restitution. In equity, however, since Lord Cottenham's time, such a covenant has been regarded as valid, and proceedings in the Divorce Court for restitution in defiance of such a covenant were, prior to the Judicature Acts coming into operation, restrained by injunction; and subsequently in *Marshall* v. *Marshall* (L. R., 5 P. D. 19), Hannen, J., said that under the amalgamation of law and equity, effected by those Acts, the equitable defence must be regarded in the Divorce Division of the High Court, and therefore that a decree for restitution could not be made when the petitioner had covenanted not to take proceedings for restitution; and in *Clark* v. *Clark*, Butt, J., followed the decision in *Marshall* v. *Marshall*, and dismissed the petition. The petitioner appealed to the Court of Appeal, but unsuccessfully, that Court holding that the decision in *Marshall* v. *Marshall* was in accordance with equitable principles as laid down by Lord Cottenham in *Wilson* v. *Wilson* (1 H. L. C. 838), and as approved by Jessel, M. R., in *Besant* v. *Wood* (L. R., 12 Ch. D. 605): and so the question is answered in the affirmative.

(4 Fisher, p. 288; Dixon's Divorce, p. 174; Harrison's Divorce, p. 145; Browne's Divorce, p. 134.)

Is Sect. 2 of the Matrimonial Causes Act, 1884, retrospective?

Weldon v. Weldon.

(S. J. 339.)

In the above case it appeared that long before the above Act was passed, viz. in July, 1882, Mrs. Weldon obtained a decree against her husband for restitution of conjugal rights. As he failed to comply with the order, the Court, on Mrs. Weldon's application, directed an attachment to issue against him. An appeal was lodged to the attachment proceedings, and before the appeal was heard the above Act of 1884 came into force, and the appeal was then withdrawn, and Mrs. Weldon applied that the writ of attachment might now issue against her husband. By the second section it is provided that from and after the passing of the Act (14th Aug., 1884), a decree for restitution of conjugal rights shall not be enforced by attachment, and the question which we have set out arose. Hannen, J., had no hesitation in deciding that the writ could not issue, as sect. 2 must be held to operate retrospectively, and the Court of Appeal affirmed his decision. Cotton, L. J., said that as the writ of attachment had not been issued before the Act came into force, it could not now issue. To allow it to issue would be to enforce decrees for restitution by attachment, and this the Act said was not to be done. The Act applies equally to decrees made before as after the date of the Act, and so our question is answered in the affirmative.

(4 Fisher, p. 286; Dixon's Div. p. 167; Harrison, p. 143.)

BOOKMAKERS AGAIN.

It will be within the recollection of our readers that recently we devoted an article to the consideration of the important betting case, *Read* v. *Anderson*. For the elucidation of our observations it was necessary to draw attention to the various species of bookmakers, dividing the genus into

two distinct species—those who make books at a loss, otherwise styled authors, and those who make books at a profit, otherwise "bookies." We mentioned but did not fully explain the different varieties of "bookies!". There is the "bookie respectabilis," closely akin to the "jobber," and more commonly known by the name of "turf commission agent." This interesting specimen claimed our attention in our last article, the decision in *Read* v. *Anderson* affecting only, as we pointed out, "bookies" of that particular class. We are now gladdened by another decision affecting the other and better known class—the common garden or racecourse "bookie" of gorgeous hue and busy hum, known and easily recognizable by his brilliant, almost gaudy, colouring, and loud, nay almost deafening, cry.

This particular species has received as much, nay more, attention from Legislature than the dreaded Colorado beetle, which refused to extinguish itself till ordered to do so by the Sovereign and Lords Spiritual and Temporal and Commons in Parliament assembled. The movements and habitations of the common racecourse "bookie" have been regulated and repressed by the combined efforts of statute and cases, so great an abhorrence has the law to this species.

For the better comprehension of the recent case of *Snow* v. *Hill*, let us glance at the provisions of the Betting Houses Act, 1853 (16 & 17 Vict. c. 119). This statute provides that any person, who being the owner or occupier of any house, office, room, or other place, or using the same for the purpose of betting with persons who resort thereto, shall be liable to a penalty. Naturally, it required no case law to determine the meaning of the words house, office or room, and the whole of the decisions have been directed to giving a legal meaning to the unfortunate word "place." Now let our reader refer to his "dictionary," and he will find the word place defined in some such terms as these: "A portion of space regarded as separate from the rest of space; a particular portion of space marked off by its use or character; a locality, spot or site; a position."

The definition is truly extensive enough to cause a judge considerable trouble in determining its application; reference to a few of the cases preceding *Snow* v. *Hill* will readily show how difficult was the task.

First, then, to take the cases of *Eastwood* v. *Mellor* (43 L. J., M. C. 139) and *Haigh* v. *Corporation of Sheffield* (44 L. J., M. C. 17), in which a pigeon-shooting ground and a cricket ground respectively were held to be places within the Act, betting being carried on there by various bookmakers; in these two cases, however, the persons prosecuted were the owners of the grounds, to which admission could only be obtained by payment; this, it seems to us, is only right, for the owners of the grounds were certainly keeping places to which persons did resort for the purpose of betting, and had thus clearly brought themselves within the penalty of the Act.

Now, however, we come to a very different class of decisions, the "*ratio decidendi*" of which appears to us to be most unfortunate: by a strained construction of the words of the statute the judges have made the Act apply to the persons resorting for the purpose of betting, and not to owners or occupiers of the places to which they resort. Thus, take the facts in *Shaw* v. *Morley*, 37 L. J., M. C. 105, there the bookie had constructed for himself and his gathered honey a temporary structure built of wood, and the Court had no hesitation in deciding that such structure was a "place." Next, in *Bows* v. *Fenwick* (43 L. J., M. C. 107), the "bookie" had provided himself with an umbrella of large dimensions and many colours, from the shelter of which, mounted on a stool, he did advertise his willingness to make and did make divers wagers and bets with sundry persons. Now here was a knotty point. Did this umbrella and stool constitute a place? May not a man if he chooses stand under an umbrella irrespective of sunshine or rain? May not a man stand on a stool at races? Not, said the Court, if he intends to advertise his willingness to bet: for then such umbrella or stool become a particular spot or site, a position, in short, a "place." By another easy gradation we come to *Galloway* v. *Maries* (51 L. J., M. C. 53); here that most artful of creatures, the racecourse bookie, had dispensed with the sheltering umbrella and contented himself with a simple moveable wooden box, from the summit of which, safe as he considered in the legal rectitude of his conduct, he offered to make and did make bets, for which conduct he was mercilessly prosecuted. Surely, it was contended, a simple wooden box without the offending umbrella cannot be a "place." The Court, careful for our morals and hating quibbles, excepting those of a legal nature, laid down that the box defined a fixed and ascertained spot, and, therefore, again it was a "place."

From wooden structure to box with umbrella,

from box with umbrella to box without umbrella, to no box nor umbrella at all, the steps are easy. So evidently thought the justices in the recent case of *Snow* v. *Hill*, for here the defendant was simply walking about the racecourse making bets on certain dog races, and for this the justices convicted him of keeping a place for betting. Against this decision the defendant appealed, and the Divisional Court quashed the decision, laying down that if a man moves about from place to place when attending races, making bets with various persons, he cannot be convicted of keeping a place for betting.

Here, then, we have the most recent exposition of the law for "bookies" of the common or racecourse class, the species that the law abhors.

"What, then," the law-abiding bookie may reasonably ask, "What, then, am I legally allowed to do to attract flies into my web?" The answer is now easy. He may not erect a wooden structure; he may not use a large umbrella, rather must he get drenched and sacrifice that glossiness of hat and raiment for which renowned; he must not stand on any box, stool or chair, and last, but not least, to carry the decision of the Divisional Court to its strictly logical conclusion, he must not stand still for one moment, otherwise he will occupy a fixed and ascertained spot in space; that done he has a "place" in the universe, and once possessed of a "place" he may be prosecuted for keeping a place for betting. We do not mean to convey that the judgment of the Court went as far as this, still the conviction was quashed because the man moved about from place to place. Surely even the much reviled "bookie" may claim sympathy in the future; to gather honey wherewith to live, he must frequent the busy racecourse owned and occupied for that purpose by another person, and there by legal decision he is doomed to flit from place to place, no spot however sweet must for a single moment induce him to rest, unless content of course to cease his busy hum; in short, to avoid conviction which, we submit, should fall on other shoulders, the wretched man must while pursuing his avocation be a frightful solution and example of the theory of perpetual motion. But one consolation is left him; customers who may confidingly entrust money to his care cannot complain if in the event of their success the "bookie" cannot be found in the particular place they expected; to keep within the law he must not be found there; many law-abiding bookies doubtless will find it highly convenient to move about from place to place with considerable rapidity; possibly even to leave the racecourse for other abodes where "place" has an ordinary signification and they can rest in peace.

Surely the cases on a statute entitled "The Betting *Houses* Act" have now reached a point of absurdity never contemplated by its framers; the statute is a penal one, and should therefore be construed strictly, at least so we were taught when reading for our Intermediate: the word strictly meaning that words shall not be strained against the offender. Who, then, but a judge privileged to ignore rules for construction of statutes would hold an umbrella to be a house or a wooden moveable box an office, and who but a justice would hold a man walking about a racecourse making bets guilty of keeping a betting house or other place.

Seriously it is open to question whether the Court did not in *Shaw* v. *Morley* drift into an error in the construction of the Act; an error which has been pertinaciously followed in *Bows* v. *Fenwick* and *Galloway* v. *Maries*. Would it not have been a sounder construction of the statute to have followed the cases of *Eastwood* v. *Mellor* and *Haigh* v. *Corporation of Sheffield*, that the persons owning the grounds, or, in other words, the owners of the racecourses, are more properly the persons who keep open a house or other place for the purpose of persons resorting thereto to bet; and that the bookmakers and their customers are merely persons resorting thereto to bet?

If the legislators desire ready-money racecourse betting to be illegal, why not pass a short statute on the subject. It is not fair to leave the judges to effect that object by straining the plain and simple meaning of ordinary words. We must confess to a sneaking sympathy with the "merry bookie" in this legal persecution. Either pass a statute decreeing his extermination, a statute which he will not know how to evade, or leave him to his own devices, which are many, but do not persecute the man for resorting to a place to bet which is owned or occupied by another person, not perhaps avowedly for that express purpose; as, however, it is now well known that there are no races without betting, those who keep racecourses must rationally be considered to keep places for betting; a racecourse, no one can deny, is a "place," but whoever contemplated, when the Act was passed, that the fact of persons resorting to an umbrella to bet with the owner thereof, would make the umbrella a "place?"

THE MAINTENANCE OF INFANTS.

Has the 43rd section of the Conveyancing Act, 1881, met the case which, in the opinion of the profession at least, it was specially designed to meet? This question is one which may be fairly raised for discussion in view of the recent case of *Re Dickson, Hill* v. *Grant*, 54 L. J., Ch. D. 212. Before examining that case, it will be useful to preface a few words on the subject of the power which trustees have, in the absence of express provision, to apply towards the maintenance of an infant income of property which they hold on trust for that infant.

When property is given upon trust for a person, who is an infant, in such a way that his interest therein is vested and the payment only of it postponed till his attaining majority, or till the occurrence of some other event, then the income of that property undoubtedly belongs to the infant, as well as the principal. But if the gift is a contingent one, *i. e.* does not vest at once and will not vest at all unless some particular contingency contemplated by the donor happens (which contingency may in fact happen or not happen), then, as a rule, the gift will not carry interest in favour of the donee during the period prior to the happening of the event upon which the gift is to become vested. (*Descrambes* v. *Tomkins*, 1 Cox, 133.)

There are exceptions, however, to this rule. Thus, where there is a bequest of a residue of personalty for life, with a gift over, the residuary legatee for life will be entitled to receive the interest on the gift as from the testator's death, *i. e.* during the first year after the testator's death, although, as a rule, legacies are not payable until one year after such death, and in the meantime bear no interest. (See *MacPherson* v. *MacPherson*, 16 Jur. 847.) So, also, a legacy payable out of land (*Davies* v. *Davies*, Daw. 84), or given in satisfaction of a debt (*Clerk* v. *Sewell*, 3 Atk. 98), will bear interest from the death of the testator.

But the exception with which we have at present most concern is that, where a testator confers a contingent gift on his infant child, or upon any minor to whom he stands *in loco parentis*, such a gift will, if the infant be not otherwise provided for, carry interest before the time appointed for payment of it, even while it remains contingent. Thus, for instance, if a testator bequeaths a legacy to his children on their attaining the age of twenty-one, or to such children as attain twenty-one, they will be entitled to interest on the legacy from the day of the testator's death (*Harvey* v. *Harvey*, 2 P. W. 21); and this, even though the testator has expressly directed the income to be accumulated in the meanwhile. (*Mole* v. *Mole*, 1 Dick. 310.)

This exception is itself, however, subject to exceptions. For—

(1) If the testator has otherwise provided for the maintenance of his infant children they cannot claim interest before the period appointed for the payment of the legacy. (*Wynch* v. *Wynch*, 1 Cox, 433; and see also *Re George*, L. R., 5 Ch. D. 837.)

(2) If the property given is realty, the intermediate income, till the property vests, goes to the testator's heir, and so cannot be applied for the benefit of the infant devisee. (*Green* v. *Etkins*, 1 Atk. 473.)

(3) The exception from the general rule only applies when the testator is the parent of, or stands *in loco parentis* to, the infant legatee (*Errington* v. *Errington*, 12 Ves. 20), and when the child is legitimate (*Lowndes* v. *Lowndes*, 15 Ves. 301), and only whilst the legatee is under age. (*Raven* v. *White*, 1 Swan. 553.)

Such being the law as to the right of a contingent legatee, while an infant, to the interest or income of his legacy during the period before it becomes vested, it was established that a trustee might always (without being expressly empowered to do so), devote a competent part of such income or interest towards the maintenance and benefit of the infant. (*Sisson* v. *Shaw*, 9 Ves. 288; see also *Douglas* v. *Andrews*, 12 Beav. 310.) And, further, by Lord Cranworth's Act, sect. 26 (which, as will be perceived, was only declaratory of the existing law, and did not introduce any new principle), it was provided, that where property was held by trustees in trust for an infant, either absolutely or contingently, on his attaining twenty-one, it should be lawful for them to apply towards his maintenance or education the whole or any part of the income to which he might be entitled in respect of such property. It is doubtful whether the legislature did not intend to provide that, whenever an infant was entitled to property contingently on his attaining twenty-one, he should have a claim to the intermediate income as a fund for his maintenance, to be applied thereto at the discretion of his trustees in any case. But if this were so the language made use of in the Act did not practically effect the purpose contemplated. For

the Act, it will be noticed, only permits the application for maintenance of the interest "to which the infant might be entitled" in respect of the gift to him. Now, if by the rules of law and equity the infant did not happen to be entitled to the income of the property as well as to the principal, the trustees would not be able to advance any of it for the infant's maintenance. The statute did not alter those rules. And, again, if by such rules the infant was entitled to the intermediate income, then the trustees would have the power to advance it for maintenance independently of the maintenance clause of the Act. Practically, then, Lord Cranworth's Act was inoperative. This is illustrated by the case of *Re George* (*supra*). There A. gave a legacy to his infant daughter G., if and when she should attain the age of twenty-one, and he set aside an annual sum for her maintenance during minority. Here the express provision of this fund for maintenance, as we have seen, excluded the operation of the rule that the intermediate income might be applied towards G.'s benefit, and no interest on the legacy would, by the terms of the gift, become payable to her until she attained the age of twenty-one. Then, indeed, if the legacy were not at once paid to her, interest would commence to run upon it in her favour, but not till then; for a contingent legacy will only bear interest in favour of the legatee from the time appointed for its payment. The question then arose, Did Lord Cranworth's Act apply, so as to empower the trustees to apply the income arising subsequently to A.'s death, but prior to G.'s attaining twenty-one, and while she was still under that age, towards her maintenance? It was held that it did not, as the Act only applied to the income to which the infant might be entitled, and G. was not entitled to any income; nor would she be entitled to the accumulations of income, even though she lived to attain a vested interest in her legacy. The Act, it was said, only empowered the advance for maintenance when, on coming of age, the infant would be entitled to both the principal and the intermediate income.

Re George must be distinguished from the case of *Re Cotton* (L. R., 1 Ch. D. 352). Here there was a bequest of a fund in trust for all children of A. who should attain twenty-one in equal shares; and if there should be but one such child, then for that one. A. died, leaving an infant child. Did Lord Cranworth's Act apply in this case?

Jessel, M. R., held that it would apply. He said, that he did not think that the word "entitled" meant indefeasibly entitled, but admitted that the expression "may be or may become entitled" would have satisfied conveyancers better. He continued, "When property is held on trust for an infant contingently on his attaining twenty-one, the infant is not entitled, strictly speaking, to the income any more than to the capital. If he attain that age, he will get both. In fact, he is entitled to both, subject to the contingency of his dying under twenty-one. I am clearly of opinion that the trustees may apply a moiety of the income for the infant's maintenance." Here it will be noticed, that by the terms of the gift the infant would be entitled, on coming of age, to the income as well as to the corpus; and this is the point in which it is distinguishable from *Re George*.

The above section of Lord Cranworth's Act has been repealed by the Conveyancing Act, 1881, and in its place sect. 43 of the latter Act provides, that where any property is held on trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining twenty-one, or on the occurrence of any event before his attaining that age, the trustees may at their sole discretion pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education or not. If we apply this section to such a state of affairs as existed in *Re George*, we find that it will exactly meet that case. There G. was an infant, entitled to property contingently on her attaining twenty-one; and the section says, in such a case, the income of that property can be applied for maintenance, whether there is any other fund applicable to the purpose or not.

But from the case of *Re Dickson*, it would seem that sect. 43 has a very narrow application, and, indeed, will only meet those cases in which the circumstances are exactly similar to those in *Re George*. The provision of the section is not general, and cannot be construed to mean that, where a legacy is given to an infant contingently on his attaining twenty-one, then the infant will be entitled to have the income applied for his maintenance, whether or not he will, on attaining twenty-

one, become entitled to the intermediate income as well as to the principal. In *Re Dickson* a testator gave a legacy to a class of persons who should be living at his death and attain twenty-one (such persons not being children of the testator, nor persons to whom he stood *in loco parentis*); and there was a residuary gift to other persons. Now, by the rules of law, as we have seen, a contingent legacy will not bear interest in favour of the legatee till the legacy becomes payable, when the legatee is a stranger to the testator.

In effect, then, in *Re Dickson* the legatees would not under the will be entitled to the interim income even if they did attain twenty-one; but that income would form part of the residue, and would go to the residuary legatees. The question then was, Did sect. 43 of the Conveyancing Act entitle the infant legatees to that income should they attain twenty-one, and to have maintenance out of it in the meantime? Mr. Justice Kay held that it did not, saying that the Act "cannot be intended to apply to income to which the infant could never become entitled, but which passed as residue to some other person. This view is, I think, confirmed by the 3rd sub-sect. of sect. 43, which excepts the case where a contrary intention is expressed in the instrument, and also makes the whole provision subject to the terms of the instrument, and the provisions therein contained. If the will had mentioned the intermediate income, and expressly given it to the residuary legatees, that might amount to the expression of a contrary intention. But if the income is in fact so given, though not by express words mentioning it, that seems to come within the other words of the clause, and to prevent the application of the section."

It will be seen that the section did not meet this case by words expressly in point, as was the case in *Re George*, and the result of the case is, that it will not apply to income to which the infant never can become entitled at all, but which passes as residue to some third person, except where the income is prevented from being taken by the infant, merely because there is in the trust instrument a fund created for maintenance, or because there is some person bound by law to provide for such maintenance. At least, until it is otherwise decided, we do not think that the effect of *Re Dickson* is to establish that sect. 43 would not apply to a case where the circumstances were exactly similar to those in *Re George*. There is another recent case on this 43rd section, *Re Judkin's Trusts* (53 L. J., Ch. D. 495), but we do not think that this is any more hostile to our contention that the section would meet such a case as *Re George*, than the case of *Re Dickson*. In *Re Judkin's Trusts*, a testator directed his property to be sold, and the residue, after payment, to be held on trust, after the payment thereout of a sum to be equally divided among such of six younger children of a deceased friend as should be alive at the death of the testator's grandson. The testator's grandson being still alive, the question arose whether the income of the fund was to be accumulated during his lifetime for the children. It was held that it was payable to the residuary legatee, and that sect. 43 of the Conveyancing Act did not apply, for the children took no interest in the income of the legacy (not being children of the testator). Kay, J., said, the section only applies to property to which an infant is entitled, absolutely or contingently, on attaining twenty-one, or on the occurrence of some event before his attaining that age, and not when the infant is unable to predicate of himself that he will be so entitled, "for it is evident that any one or all of these six children may die before the testator's grandchild, and thus never become entitled at all. In such a case, neither the trustees or the Court can apply the income for the maintenance, and there is no obligation to accumulate."

Sect. 43 evidently was framed to meet *Re George*, and it is probably for that reason that it will meet no case which differs in any respect from it; and in these latter cases the provisions of the section are of no greater benefit to infants than was the repealed section of Lord Canworth's Act.

APPEALS IN DIVORCE CASES.

Some time ago we called attention to the confusion which exists in the Acts and Rules which relate to appeals in cases of dissolution and nullity of marriage. (See Law Notes, Vol. II. p. 20.) We then pointed out that originally appeals lay to the House of Lords within three months after the decree of the full Court; that, subsequently, under the Matrimonial Causes Act, 1868 (31 & 32 Vict. c. 77), the appeal was to be brought to the House of Lords within one month; that by the Judicature Act, 1881 (44 & 45 Vict. c. 68), they were to go to the Court of Appeal in the first instance, no time, however, being fixed within

which the motion for appeal must be made; that a further appeal lay from the Court of Appeal to the House of Lords within one month from the decision of that Court; and that no appeal could be brought from a decree absolute by any party who, having had time and opportunity to appeal from the decree nisi, had not done so. No time is limited within which an appeal must be brought from a decree nisi, but as such a decree can be made absolute after the expiration of six months, it would appear that an appeal therefrom must be made within that six months; for if it be once made absolute, it will be final, except under special circumstances. We intimated our impression that new rules were to be promulgated, setting the matter free from doubt; but up to the present time this has not been done. Meanwhile, however, the confusion attending the rules has occupied the attention of the House of Lords, and though the case of *Cleaver* v. *Cleaver* (L. R., 9 App. Cas. 681) has not cleared up the mystery, it has at least settled one point of doubt.

The facts of the case are somewhat complicated, but for our present purpose they are sufficiently set out in the following table:—

March 3rd, 1883—A. obtains a decree nisi for dissolution against her husband B.

April 5th—B. applies in person for a new trial. Application refused.

May 9th—B. applies in person to the Court of Appeal to reverse that refusal. Application dismissed.

In June B. lodges an appeal against the decree nisi in the House of Lords, which is informal, not being signed, as required, by two counsel.

November 9th—Decree made absolute.

November 30th—B. lodges an appeal in the House of Lords from the decree absolute. It stands over to be signed by counsel.

April 4th, 1884—The last-mentioned appeal is presented correctly signed.

May 7th—B. lodges an appeal from the order of the Court of Appeal of the 9th May, 1883, and petitions that the two appeals may be heard together.

May 23—The Appeal Committee meet.

Here the reader will observe there were two appeals—(1) appeal from the decree absolute, made direct to the House of Lords; (2) appeal from the decision of the Court of Appeal, but lodged more than one month after the decision, though within the year.

Now as to the first appeal, the question before the House of Lords' Committee was, Can an appeal from a decree absolute be now made direct from the Divorce Division to the House? This clearly would be so if sect. 3 of 31 & 32 Vict. c. 77 (Matrimonial Causes Act, 1868) was still in force. But the House held that there is now no such direct appeal from a decree absolute. For, firstly, sect. 19 of the Judicature Act, 1881, says that appeals shall lie to the Court of Appeal in the first instance. Secondly, the Judicature Act, 1876, says that appeals shall lie to the House of Lords from a decision of the Court of Appeal, and that an appeal shall *not* lie from any of the Courts from which an appeal to the House of Lords is given, except in the manner provided by the Act. And thirdly, by sect. 9 of the Judicature Act, 1881, instead of appealing to the old full Court in the Divorce Division, there is substituted an appeal to the Court of Appeal; but no appeal is to lie in favour of any party who, having had time and opportunity to appeal from the decree nisi, has not done so.

As to the second appeal, the question before the House was, Is not the appeal too late? The answer was, that it was too late; for under sect. 9 of the Act of 1881, the appeal must be brought from the Court of Appeal within one month, and Standing Order 1 of the House of Lords (which allows appeals in general from the Court of Appeal to be brought within a year), does not enlarge this time, nor say that when a statute has fixed a shorter time that shorter time shall be enlarged and made into a year.

In result, then, when a decree nisi for dissolution or nullity has been pronounced, a party wishing to appeal from it must apply to the Court of Appeal in the first instance (if he has the time and opportunity), by way of appeal from the decree nisi, and before that decree has been made absolute, *i. e.* within six months. If that appeal is dismissed, he may then apply to the House of Lords within a month from the order dismissing the appeal, if the House of Lords, is then sitting, or if not, then within fourteen days after it next sits. If he had not time and opportunity, and only in this case, then he may appeal from the decree absolute to the Court of Appeal. But within what time? Apparently within one month, under 31 & 32 Vict. c. 77 (Matrimonial Causes Act, 1868). From the Court of Appeal's decision in the decree absolute he can appeal to the House of Lords as already stated. The above

courses are those which, as far as we can make out from the present state of the rules regulating the appeals, are open to a party to a suit for dissolution or nullity of marriage. We should be much obliged to any of our readers who can throw any light on the subject if they would communicate to us their ideas.

LEADING CASES FOR STUDENTS.

The following cases, taken from the "Leading Cases," have been already considered at length in the Law Notes:—

CONVEYANCING CASES TAKEN FROM TUDOR'S LEADING CASES IN CONVEYANCING.

Rouse v. *Artois*, Vol. I. p. 99 (March, 1882).
Bradley v. *Peixoto*, Vol. I. p. 126 (April, 1882).
Cadell v. *Palmer*, Vol. I. p. 292 (September, 1882).
Griffiths v. *Vere*, Vol. I. p. 353 (November, 1882).
Forth v. *Chapman*, Vol. II. p. 314 (October, 1883).
Sir Miles Corbett's Case, Vol. III. p. 88 (March, 1884).
Boraston's Case, Vol. III. p. 213 (July, 1884).

COMMON LAW CASES TAKEN MAINLY FROM SMITH'S LEADING CASES IN COMMON LAW.

Mitchell v. *Reynolds*, Vol. I. p. 231 (July, 1882).
Cumber v. *Wane*, Vol. II. p. 22 (January, 1883).
Ashby v. *White*, Vol. II. p. 86 (March, 1883).
Chasemore v. *Richards*, Vol. II. p. 215 (July, 1883).

EQUITY CASES TAKEN FROM WHITE AND TUDOR'S LEADING CASES IN EQUITY.

Scott v. *Tylor*, Vol. I. p. 164 (May, 1882).
Wake v. *Conyers*, Vol. III. p. 280 (September, 1884).

It is proposed in the present Number to consider a celebrated case on the law of commons, viz.:—

PHESANT *v.* SALMON, commonly known as TYRINGHAM'S CASE.

(Tudor's Conveyancing Cases.)

Facts.

This case was decided in the 26th year of Queen Elizabeth's reign, and the facts in the case were of a simple character, and as follows:—One Thomas Tyringham was seised of a house and of meadow, pasture and arable land in Titmarsh, in the county of Northampton, and in connection with this house, &c. he had a common of pasture appurtenant for his oxen, cows and heifers in thirty acres of land belonging to one John Pickering in fee simple, and also in forty acres of land belonging to one Boniface Pickering in fee simple. The said Boniface Pickering purchased from the said Tyringham the said house and lands in connection with which Tyringham had the above-mentioned common of pasture. Boniface Pickering then leased the house and lands formerly belonging to Tyringham to Phesant, the plaintiff in the action; and Phesant, considering that the right of common of pasture over John Pickering's lands was unaffected by the foregoing dealings with the property, put his beasts on the lands of John Pickering; and Salmon, the defendant in the action, who was farming the lands of the said John Pickering, with a little dog *molliter et leviter*, drove out the said animals; and it was for this conduct on the part of Salmon that Phesant sued for damages, alleging that Salmon had no right to chase off his cattle, and, having done so, was guilty of a trespass.

Decision.

It was resolved by the whole Court that the plaintiff could not maintain his action. The common of pasture belonging to Tyringham was a common of pasture *appurtenant* and not appendant, and could not be apportioned. Consequently, on the purchase by Boniface Pickering of the house, &c. to which the common was appurtenant the common was altogether gone, and Phesant, the lessee of the house, &c., could not exercise the former right of common which Tyringham had over the lands of John Pickering. Salmon was not bound to impound the animals *damage feasant*. He was perfectly justified in chasing the animals off the lands farmed by him; and the course he adopted, viz., using "a little dog," was a justifiable and proper course, and judgment went for the defendant.

Remarks.

It will be noticed that the common of pasture in the above case was *appurtenant* and not *appendant*. Had it been *appendant* the common would have been apportionable, and the plaintiff would have succeeded in his action.

Common of pasture *appendant* is of *common right*, and need not be prescribed for, but common of pasture *appurtenant* is against common *right*, and must be prescribed for. Let us inquire what this means, and our inquiry will lead us back to the early days in which manors were created. When a lord conveyed arable lands to his tenant to hold of him the lord, it was the duty of the tenant to plough and manure the lands thus

granted to him. The tenant had no pasture lands of his own—how, then, could he perform the duties attending his holding, which necessitated the keeping of cattle? To enable him to do so the tenant had, as incident and necessary to his holding, common in the lord's wastes for his commonable beasts, *i. e.* for his horses and his oxen to plough the lands, and for his cows and sheep to manure it. There was a second reason for giving the tenant this common of pasture, viz., the maintenance and advancement of tillage. It follows from this that every tenant of a manor has, as incident to his estate, a common of pasture *appendant*, *i. e.* the right to feed his commonable beasts on the lord's waste; and this is of common right and need not be prescribed for, that is to say, the tenant need only show that he is tenant of the manor to give him the common of pasture appendant, and he need not show that time out of mind the common has been enjoyed by him and his ancestors, or by those whose estate he has. The tenant, however, in making the claim must claim the common in respect not of a house, not of meadow nor pasture land, but in respect of *arable* land; and he may and must so claim, even though the land, originally arable, has been converted into pasture or a house has been erected upon it; for the origin of the common, viz., that it was incident to the lands because they were arable, and had to be ploughed and manured, and the tenant had in those days no meadow land of his own, is looked to. And if the tenant claims for common of pasture appendant as annexed to a house or to pasture lands his claim will fall through, he must claim in respect of land originally arable.

But if a tenant of a manor claims the right to put other beasts, not being horses or oxen, sheep or cows, that is, not being commonable beasts, *e. g.* if he claims to put hogs and geese on to the lord's wastes, he claims a common of pasture *appurtenant*, and must make good his claim by *prescription* (that is to say, he must show that time out of mind the common has been usually exercised), or show that the right has been conferred by deed of grant; with regard to this common appurtenant, it may be claimed equally as annexed to meadow or pasture land as to arable land. This, then is the distinction between common of pasture appendant and common of pasture appurtenant. There is yet another kind of common of pasture—common of pasture in gross, *i. e.* a common of pasture which does not appertain to land, whether arable or meadow or pasture, but is annexed to a person. This common is also against common right, and must be prescribed for. Thus, if A. grants to B., who is not holding lands of him, A., the right to feed his, B.'s, sheep on his, A.'s, lands, this is a common in gross.

There is also common of pasture *because of vicinage*, which we sufficiently explained when considering *Sir Miles Corbet's Case*, and the *common of shack* to which that case relates. (See Law Notes, Vol. III. p. 88.)

The clear distinction which exists between common of pasture appendant and appurtenant, is to be gathered from the judgment in *Tyringham's Case*. That judgment also lays down, as has been already stated, that while common of pasture appurtenant, being against common right, cannot be apportioned, and for this reason the plaintiff, Phesant, lost his case, yet common of pasture appendant, being of common right, *i. e.* necessary, can be, and must be, apportioned; and consequently, if a tenant, having common of pasture appendant, purchases a parcel of the land to which his common applies, the common is apportioned in the same way as the lord's rent has to be apportioned when he purchases a parcel of his tenant's land. But if the tenant purchases the whole land to which his common of pasture, whether appendant or appurtenant, attaches, the common is lost and destroyed by the unity of possession; and, therefore, if the tenant subsequently sold the land of which he had formerly common, he would not be able to exercise his common any more (unless he acquired the right to do so by grant), as the unity of possession destroys a common of pasture. It is also shown by *Tyringham's Case* that a man cannot obtain by prescription (*i. e.* by long and peaceable usage) a right as annexed to property belonging to him, unless it agree in nature and quality; and, therefore, while a man may prescribe for a common of pasture being annexed to land held by him, since the holding of lands requires beasts to cultivate them, yet he could not, as a tenant of lands, prescribe for a common of turbary, since a right to cut and take turf from another's land must be claimed as annexed to a house, for the turf cut can only be used as fuel in the house; and if there is no house, it would be vain to claim a common of turbary, for the common would not agree with the thing in respect of which it was claimed.

From what has above appeared, it will be seen that much favour in the early days was shown to tenants of *arable* lands; and in an action brought

with regard to land, owing to its dignity arable land ought to be mentioned before meadow land, and so in schedules to deeds, in describing the various lands conveyed, the arable lands should be first described. In the judgment in *Tyringham's Case* attention is drawn to the inconveniences which arise from the conversion of arable into meadow lands, and they are :—(1) The increase of idleness, the root and cause of all mischiefs; (2) Depopulation and decrease of populous towns and maintenance only of two or three herdsmen who keep beasts, in lieu of great numbers of strong and able men; (3) Churches for want of inhabitants run to ruin and are destroyed; (4) The service of God is neglected; (5) Injury and wrong is done to patrons and curate; (6) The defence of the land for want of men strong and inured to labour, against foreign enemies weakened and impaired. These are the inconveniences, tending we are told to bring about two deplorable consequences, viz. :—(1) The great displeasure of God; (2) The adversion of the policy and good government of the land; and all this by the decay of agriculture, one of the greatest commodities of the nation. "For make what statutes you please, if a ploughman has not a competent profit for his excessive labour and great charge he will not employ his labour and charge without a reasonable gain to support himself and his poor family."

NOTES ON THE FINAL.

The Pass Examination of this month will be held on Tuesday and Wednesday, April 21st and 22nd, and the Honors Examination on Friday, April 24th. Renewed notices can be given up to and upon Tuesday, April 7th. Other notices can now only be given on obtaining an order allowing notice "*nunc pro tunc.*"

Our answers to the "Pass" questions will be published on Thursday morning the 23rd inst., and will be sent off with the Intermediate and Honors answers to our Subscribers early in the week following the Examination.

The result of the Examination will be announced in the Law Society's Hall on Friday, May 8th; and the list of successful Candidates will appear in the "Times" of Saturday, May 9th.

STATUTES FOR STUDENTS.

(*Continued from Vol. III. p.* 378.)

Our next statute for consideration is—

20 Hen. 3, c. 4 (known as *The Statute of Merton*), A.D. 1235.

Previous to the Statute.

Many "great men of England" who had enfeoffed knights and their freeholders of small tenements in their great manors, being doubtful whether they could make profit of the residue of their manors, as of wastes, woods and pastures, by enclosing a portion thereof, owing to the rights possessed thereover by these knights and their freeholders, procured the statute under consideration to be passed. It provided—

Provisions of the Statute.

"That whenever such feoffees [*i.e.* feoffees of small tenements held of some manor] do bring an assize of novel disseisin for their common of pasture, and it is acknowledged before the justices that they have as much pasture as sufficeth to their tenements, and that they have free egress and regress from their tenement unto the pasture, then let them be contented therewith; and they on whom it was complained shall go quit of as much as they have made their profit of their lands, wastes, woods and pastures; and if they allege that they have not sufficient pasture or sufficient ingress or regress according to their hold, then let the truth be inquired by assize: and if it be found by the assize that the same deforceors have disturbed them of their ingress and egress, or that they had not sufficient pasture (as before said), then shall they recover their seisin by view of the inquest; so that by their discretion and oath the plaintiffs shall have sufficient pasture, and sufficient ingress and egress in form aforesaid, and the disseisors shall be amerced, and shall yield damages as they were wont before this provision. And if it be certified by the assize that the plaintiffs have sufficient pasture with ingress and egress (as before is said) let the other make their profit of the residue, and go quit of that assize."

Effect of the Statute.

The Act declared that a lord of a manor should in future have the right to enclose a portion of the wastes of the manor, provided he left a sufficiency of ground for the purposes of his tenants. Probably he had this power by the common law (see 2 Inst. 474). The Act only extends to common *of pasture*, and the lord cannot under its provisions enclose against common of estovers, of turbary, or in the soil, &c. (See 2 Inst. 87; *Bateson* v. *Green*, 5 T. R. 416; *Ouberley* v. *Page*, 2 T. R. 391.)

Enclosing under this statute is called "approving." If the lord, in "approving," does not leave a suffi-

ciency of common for his tenants, a right of action for damages arises against him at the suit of the tenants. Further, if in enclosing the lord encroaches on any other right of the tenant beside that of pasturing his beasts on the waste—*e. g.* if the lord encloses a portion of the waste in which the tenants have a right to dig gravel—the lord subjects himself to an action for damages, for, as stated above, the statute merely allows common of pasture to be enclosed against.

The provisions of this ancient statute still remain in force, but they are in practice very little taken advantage of, since the enclosure of commons and consequent extinction of common rights is now regulated by various Inclosure Acts which have from time to time been passed, the most important of these statutes being 8 & 9 Vict. c. 118. Under these Acts the enclosure of commons takes place under the supervision and direction of a board of commissioners, formerly known as the "Inclosure Commissioners," but now, by the Settled Land Act, 1882, styled "The Land Commissioners." Still the Statute of Merton is not one to be forgotten; for at the time it was passed its provisions were most important, since they declared it to be perfectly legal for "the great men of England" to do that with regard to their property which would not injure any one. Whether the statutory powers were unfairly taken advantage of is another question. It will be observed that the statute only refers to the "freeholders" of a manor; the right of the lord to enclose against the *villeins* of the manor was in those days in no need of a statutory declaration, since the villeins were but serfs, with whom the lord could do just as he willed.

NOTES ON THE INTERMEDIATE.

The Examination of this month will be held on Thursday, April 23rd. The hours of the Examination will be 10 a.m. to 2 p.m. and 3 p.m. to 5 p.m.

Our answers to the questions will be published on the morning after the Examination (Friday, April 24th), and will be forwarded with the Final (Pass and Honors) answers to our Subscribers early in the week following the Examination.

The result of the Examination will be announced in the Law Society's Hall on Friday, May 8th; and will also appear in the "Times" on Saturday, May 9th.

"Tyringham's Case" and the "Statute of Merton," considered elsewhere in this Number, should be carefully perused by those of our readers who have not yet passed the Intermediate.

"MEMS. ON STEPHEN."

(*Continued.*)

Modes of Severing a Joint Tenancy.

1. By partition. 2. By alienation without partition. 3. By an accession of interest.

Modes of Severing a "Coparcenary" Estate.

1. By partition. 2. By alienation of one of the parties. 3. By the whole at last descending to and vesting in a single person.

Modes of Severing a Tenancy in Common.

1. By partition. 2. By the uniting all the titles and interests in the estate held in common in one tenant.

How Partition is effected.

1. By voluntary arrangement between the co-owners, carried out and perfected by a deed of partition. 2. By proceedings in the Chancery Division, whereby a compulsory division of the property is decreed by the Court and perfected by mutual conveyances executed by the co-owners. 3. By an order or award obtained from the Land (formerly Inclosure) Commissioners.

How Voluntary Partition between Coparceners is effected.

1. An agreement to divide the inheritance into fixed equal parts. 2. A division of the property by a friend of all the parceners, and a choice of the property by each parcener according to seniority. 3. A division by the eldest, in which case he or she chooses last. 4. A division of the property and the tenants casting lots for their shares.

When a Joint Tenancy should not be severed.

1. When the joint tenants hold the property as trustees. 2. When the joint tenants hold for life only. In these cases the "*jus accrescendi*" is beneficial.

Peculiarities of the "Jus accrescendi."

1. The tenants cannot transmit their shares in the property by will. 2. On death of one joint tenant his share is not available for his debts. 3. Neither dower nor curtesy attach to joint estates. 4. A joint tenant has a difficulty in alienating *inter vivos*, since he has no definite share in the property. 5. The "*jus accrescendi*" is destroyed by an alienation *inter vivos* by one joint tenant of his interest, and this whether the alienation is absolute or by way of mortgage. 6. It is doubtful whether the "*jus accrescendi*" is destroyed altogether or merely *suspended* by the joint tenant making a lease of his share. 7. If A., B. and C. are joint tenants, and A. sells his interest to D., D. holds as tenant in common with B. and C.,

who remain joint tenants of the other two-thirds of the property.

What are Cross-Remainders.

An example of a cross-remainder arises under an ordinary settlement of land. The settled lands are limited first to the sons in tail according to seniority in age and priority of birth, and if there are no sons the lands are settled on all the daughters of the marriage, not as joint tenants, but as tenants in common in tail with *cross-remainders between them*, that is to say, the settlement provides that if any daughter dies without leaving issue who attain twenty-one, her share is to go over to her sisters, and not revert to the settlor, and thus the whole lands will vest in the surviving daughter if the others die without issue.

Illustration of the effect of Cross-Remainders.

On A.'s marriage lands are settled as above; A. has no sons, but has four daughters B., C., D., and E., all of whom live to attain twenty-one. B. dies without issue; her share in the lands, instead of reverting to A., passes over to C., D., and E. Sister C. dies without issue; her share in the lands, as well that to which she was originally entitled under the settlement in her own right as that which accrued to her on the death of her sister B., passes over to D. and E. Subsequently D. dies without issue, and all her share in the property vests in E., who becomes seised in tail in severalty, which is the object of the cross-remainders. In short, the effect of these remainders is to confer the right of survivorship upon tenants in common, if, and if only, any tenant dies without issue who attains twenty-one.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Law Students' Societies.

To the Editor of the "Law Notes."

Sir,—I take it that the insertion in your last issue of an article on Law Students' Societies is equivalent to an invitation to your subscribers to discuss the subject. Allow me, therefore, to offer a few remarks.

Your contributor is certainly correct in saying that the question of compulsory attendance is a knotty point; and as he anticipates great opposition to his suggestion, I need not apologize for venturing to differ from him. Take the case of a small country society. Nearly all the articled clerks in the town become members as a matter of course. Not more than a dozen, perhaps, regularly attend the debates. There is considerable difficuty in keeping the society alive, but the active ordinary members, with the aid of the honorary members, and of the funds provided by those who never attend, manage to keep the society afloat. But what would happen if the attendance were made compulsory? Why, nearly all who regularly stay away from the debates would be "offended," and withdraw from the society, with the result that it would be impossible to carry it on, and those who before benefited would be the only losers. True, it would be for the good of the delinquents to compel them to attend, if this could be done; but if they have not the sense to see the advantages offered, why should those who do avail themselves of such advantages go out of their way to demonstrate them?

The debates, in my opinion, should not be exclusively on legal subjects. One of the primary objects of these societies is to enable each member to become accustomed to the sound of his own voice, and to teach him to think while on his feet, as well as when sitting down. This object is far more easily accomplished by discussing some object of social or political interest than by a futile consideration, *e.g.*, of whether *Burdick* v. *Sewell* was rightly decided.

The libraries of Law Students' Societies are not, as a rule, successful experiments. No such society can exist except in a fairly large town, where there is almost sure to be a law library to which the students have access. Besides, every student will find that he must himself possess copies of the more important works; and that it is almost necessary to have the latest edition; whereas the library copy would probably be an old one, unless the society constantly expended its funds in buying recent editions.

One of the arguments in support of compulsory attendance at the debates is, that the law student with too much conceit would gently undergo an evolution, and become a student with just conceit enough. No doubt this is a very desirable end. But the law student is, or at all events is supposed to be, a rational being, capable of judging for himself, and if he be wilfully blind to his own interest, why resort to "grandmotherly legislation" to enlighten him? Rather let those who are more far-seeing profit through the supineness of those who will not help themselves. And if the man who did not waste his time while under articles, finds in after-life that he can get on more prosperously than his fellow-article, who felt himself too perfect for improvement, surely it is but a just reward.

It must be borne in mind, that the plan of making attendance at these societies compulsory would not benefit the thousands of articled clerks whose lot it is to be articled (and, so to speak, buried alive) in the small towns throughout the country. These men have no Law Students' Society, and are solely dependent on their own resources for cultivating the art of public speaking, and generally improving themselves. In the absence of a Law University, it

seems to me that the best way of attaining the object sought by your contributor, would be to make it *compulsory* that *every* articled clerk, except University men, should spend at least one year of his articles in London, and during that time attend a course of lectures and debates provided by the Incorporated Law Society. Seeing the extent to which clerks are "bled" for examination fees, and the large profits produced by these fees, the proposed lectures and debates should be provided free of charge. It might be objected, that the year in London would cause an expense which many articled clerks could not afford; but the profession is already overcrowded, and some steps should be taken to prevent it becoming more so. A year's residence in London would considerably enlarge the ideas of those articled clerks who require to have some of the conceit taken out of them.

In order to ensure that only well educated men are admitted, it might be advisable to require every clerk to pass a stiff preliminary examination, such as the London Matriculation; but even if matters be left in *statu quo*, I have no fear but that the best men will ultimately prevail; and no matter how overcrowded the profession become, the doctrine of the survival of the fittest will apply with full force.

A. E. Bromehead Soulby.

Answers to Correspondents.

N. T. Linnett.—It has been held that a District Registrar is bound to indorse the summons for the purpose of appeal (see *Danger* v. *Nelson*, Law Notes, Vol. III. p. 136), and it would appear to be equally imperative on a Master to do so.

Wm. Pearce.—In the absence of agreement the tenant.

A. T. B.—We do not know a case on the point; but on ordinary principles B. would be liable.

Yorkshire.—You ought to be quite safe. We have no faith in questions and answers, except for the purpose of revision just before the examination.

A. E. B. S.—Yes; by 46 & 47 Vict. c. 38; Law Notes, Vol. II. p. 308.

C. S. Bradley and E. G. N.—This information you will obtain on application to the "Secretary, University of London, London."

R. N. G.—(1) The passage is "cloudy," but your reading of it is right; (2) Yes; (3) Broom's Commentaries.

Barron Huddelstone.—Thanks; the matter is set right this month.

Polonius.—Certainly, A. could not by his will interfere with the provisions of the mortgage deed.

Firm.—If the parties knew nothing of the soap business we think they would be restrained by injunction, even though they might only be using their own name, for it would operate as a fraud on the public.

Mulcaster.—Looking to the object of sect. 23, viz., to protect the mortgagee, who, had there been no insurance kept up by the mortgagor, might have insured, we think that the insurance company's contention would not avail them. The mortgagor's insurance is for the benefit of the mortgagee, and there would appear to be a clear distinction between this case and the one you refer to. The mortgagee would be a person interested in the premises within 14 Geo. 3, c. 78, and so entitled, apart, we think, from the Conveyancing Act, to have the money laid out in rebuilding under the provisions of that Act.

J. T. C. B.—The Aids to Equity will bring your edition up to date. Thanks for your other suggestion, but if adopted we know that the great majority of our readers would be dissatisfied.

Lex.—1. Certainly not. 2. Yes. 3. We are not certain; write the Secretary of the Law Society.

E. E. Paine.—1. Yes. 2. At present, yes, if you also get up all the cases decided since the Act came into operation. 3. Yes.

T. D.—1. At the first examination which takes place after 18 months of the articles have expired; in the case you state, June, 1888. 2. We think so; but we do not know. 3. Gradual reading for a year should be done, and earnest diligent work for the last two months. 4. We recommend four months for postal preparation.

J. R. P.—(1) 14th ed. (1884). (2) Yes. (3) We think not.

F. W. Bull.—1. Yes, if you do not go to your London agents. 2. We believe so.

Remog.—(1) Thanks; the matter should have been stated as you suggest. (2) Letters of administration by the father would have to be taken out.

W. H. W.—1. Yes, unless the goods have been sold in *market overt*, when they could not be recovered until after conviction. Replevin would, no doubt, have been the old form of action. 2. We think so, but it would be a ground for getting the action stayed.

Gethier.—If the cause of action accrued to the woman prior to 1st January, 1883, the Statute of Limitations would begin to run from that day. If the cause accrued since it would run from the date of accrual. (See Greenwood's Real Property Statutes, 2nd ed., p. 357, where the case of *Weldon* v. *Neal* is quoted.)

W. H.—(1), (2) and (3) We are afraid we cannot advise you on these points. (4) The same advice applies. (5) The right is never questioned. (6) You might omit Roscoe: Goodeve is a good substitute. (7) Both should be read for Honours. (8) Space does not permit.

AQUILA AND H. LEWIS.—(1) A summons taken out at the Petty Bag Office, where full information can be obtained; very special grounds will have to be shown. (2) It does not affect it at all (see *Eli Hickson* v. *Darlow*, Law Notes, Vol. II. p. 72). (3) We think not.

A. E. B. S.—These are moot points, and can only be definitely answered by the Court. In our opinion, *any* married woman is now in the position for most purposes of a *feme sole*, and so could do what you suggest.

ÆQUITAS.—Thanks. We, however, feel that no good would be done by a petition. The evil will produce its own remedy, and if a petition were used it would only tend to stem the natural current of events.

E. G. ROBINS.—Thanks. This name will be put right when we give our list of cases.

JUNIUS.—(1) Nov. 1886. (2) We do not know. (3) The present edition will, no doubt, be allowed. (4) End of July, 1885.

LEX (Leeds).—We may do this when we have space, though it is somewhat outside the scope of the magazine.

H. COPLEY.—The "Mems" are continued this month. In addition, the consideration of *Tyringham's Case* and of the Statute of Merton should be useful to you and others who have not passed the Intermediate.

A. G. TANFIELD.—(1) See Williams' Personalty, Chapter on Insurance. There is nothing to prevent what you suggest. The company need only pay the amount of the insurable interest at the date of insurance. (2) Two weeks for agreements and two months for deeds.

SINE DOLO.—Address the Secretary of the United Law Student's Society, c/o Law Society, Chancery Lane.

J. A. C.—(1) The surviving trustee would have no power to appoint. (2) The concurrence of the trustee is absolutely unnecessary (see sect. 20).

T. P. P.—This would be a case for counsel.

T. LYNN COOKE.—We are sorry we cannot assist you on the points your letter refers to.

J. C. N.—The edition you have will do if you have also some Guide to it bringing it up to date.

D.—*Scienter* must be proved in all cases where a domestic animal does damage, except in cases falling within 28 & 29 Vict. c. 60.

"GIBSON'S GUIDE TO STEPHEN."
New Edition.

In reply to several correspondents, the Fifth Edition of this Guide was published on 14th March, and copies can be had of the publishers, Messrs. REEVES & TURNER, 100, Chancery Lane.

The new edition is brought up to date, and incorporates all important Acts of Parliament, Rules of Court, &c. up to the present time.

REVIEWS.

The Law of Real Property, chiefly in relation to Conveyancing. By HENRY W. CHALLIS, M.A., Barrister-at-Law, Esq.—With a knowledge of the excellency of Hood & Challis's Conveyancing Acts, and the treatise on Real Property therein contained, we took up the book before us in anticipation that we should derive much profit and pleasure, and we have not been disappointed. The work is a most accurate and learned disquisition on the difficult subject with which it deals. The author has gone to the fountain sources for the information he affords, the book being based upon such works as Bacon's Uses, Coke upon Lyttleton, Comyn's Digest, Fearne's Contingent Remainders, Coke's Institutes, Preston's Abstracts, Preston's Treatise on Conveyancing, Sheppard's Touchstone, Viner's Abridgment, &c. How can the student of the present day sufficiently thank an author who is at the pains to carefully select from ancient authors all that is necessary to give a succinct and clear outline of the Law of Real Property, starting from early days and bringing it down to date? And this is what Mr. Challis has done. Nay, he has done more. He tells us from time to time how the ancient writers have differed on this and that point, and the grounds of their differences, and then gives his own reasons for taking the opinion of one rather than of the other. In short, he has done for the student what would have taken him years of labour to do for himself, even supposing him to have at his hands the materials upon which to work. We have read the book from beginning to end, and have no hesitation in giving it the heartiest recommendation to such of our readers who want to become thoroughly acquainted with the intricacies and niceties of our Law of Real Property. But we must at the outset warn them that the work is a very difficult one to thoroughly master, and they must be prepared to give to it some considerable time and attention. It is indeed by no means a *primer* on the subject, but it will be found an excellent *second* book, and should not be too difficult to a student who has got a fair knowledge of Vol. I. of Stephen or of Williams's Real Property. It will be seen, from what we have said, that we think highly of this book, and believe that it will take rank as a leading text-book on Real Property. At the same time, we feel that the author might in many cases with great advantage have added a simple example to explain what to his mind no doubt is simple enough, but what to a student may present almost an insurmountable difficulty; and we think that, had the twenty-six pages devoted to the case of *Witham* v. *Vane* been given up to an explanation, in a simple and practical way, of some of the difficult rules laid down, the space would have been better filled, for really we fail to see anything in *Witham* v. *Vane* deserving of such a space as that allotted to it by the author.

For a first edition the work appears wonderfully free from errors. On p. 194, however, we find, in connection with Rule 4 there given, a curious statement illustrating the descendants of the father. The example given as illustrating Rule 4 was, we suppose, intended to illustrate Rule 5. On another page we find a reference to the "first edition of this work," as if the present were a second or third, instead of itself being the first edition. On p. 296 we find it stated that a *partial* alienation suspends a joint tenancy, but no explanation of what was in the mind of the author appears. If he refers to a lease, then it would appear that the statement is not absolutely correct (see notes to *Morley* v. *Bird*, in Tudor's Conveyancing Cases), from which it seems that a lease by one joint tenant severs as to his interest the joint tenancy altogether.

In the chapter on qualified fees, the author further says (p. 217) that "in a certain sense it may be said that the *quantum* of the estate differs [from a fee simple absolute], the descent being restricted to one class only of the heirs, and the estate determining with the exhaustion of this class." This must surely be meant to be read subject to the provision of sect. 19 of 22 & 23 Vict. c. 35, which would seem to have the effect of making the *quantum* of the estate of a qualified fee potentially the same as that of a fee simple absolute; but he does not say so.

In connection with conditional fees, he says, on p. 213, that "birth of issue of the prescribed class would practically convert what may be styled a gift in *special tail at common law* into a gift in general tail at common law. This proposition is deduced from Lord Coke, as a conclusion from the doctrine (1) that the survivor being the wife, her second husband . . . . should be tenant by the curtesy; and (2) that the survivor being the husband, the second wife should have dower." Some comment, we think, on this "deduction" of Coke's, should have been made, for it appears, as one of our pupils expressed it, to be "arguing in a vicious circle."

On p. 297, a reference ought to have been made to 3 & 4 Will. 4, c. 27, which abolished the writ of partition, and thereby made the remedy for partition exclusively in Chancery.

With these remarks we must close our review, satisfied that the labours of the author will be appreciated, and trusting that, when a second edition is called for, he will endeavour to make his text a little simpler by the skilful introduction of explanatory illustrations. It must not be supposed that this book deals with *practical* conveyancing, on which so many questions are now set at the Law Society Examinations. It merely deals with the *theory* of the law of Real Property. The work is published by Messrs. Reeves & Turner, 100, Chancery Lane.

Shearwood's Abridgment of Real Property. Third edition. By J. A. Shearwood, Esq.—This little book has always been a favourite one with us, and will be found very useful to students as a revision book just before their examination. We do not advise it as a book to *learn* the law of real property from, for it is far too concise for that purpose, but merely recommend it for *revision purposes*. The work is now brought up to date, and several errors which appeared in the last edition have been corrected; but we regret to have to point out several inaccuracies even in the third edition, which are not merely printer's errors. Thus, on p. 42, when comparing the Settled Estates Act, 1877, and the Settled Land Act, 1882, we are told (*inter alia*) that the Act of 1882 does not authorize a lease for thirty-five years, as does the Act of 1877, in defiance of sect. 65, sub-sect. 10, of the 1882 Act, which says that an Irish lease may be for thirty-five years. On p. 56, we are told that the receiver appointed by a mortgagee under the Conveyancing Act, 1882, is the agent of the mortgag*ee*, whereas, in fact, he is the agent of the mortgag*or* (see sect. 24, sub-sect. 2). On p. 64, we do not think that the remedies of an equitable mortgagee are nearly as clearly stated as they should be. On p. 99, we are told, in defiance of the Intestates Act, 1884, that a rent-charge in fee does not escheat for want of heirs, but simply ceases, and this, though on p. 93, the author expressly refers to the Act as showing that incorporeal hereditaments do now escheat. On p. 91, is given the decision of Mr. Justice Chitty in *Mander* v. *Harris*, although, now nearly a year ago, that decision was materially altered by the Court of Appeal. We deem it our duty to point out these mistakes, so that they may be rectified in the next edition, as they materially detract from the value of a very useful book. It is published by Messrs. Stevens & Sons, 100, Chancery Lane.

Marcy's Epitome of Conveyancing Statutes. Fourth edition, enlarged. By George N. Marcy, Esq., Barrister-at-Law.—In this useful little book the attention of students is drawn to the provisions of all leading statutes on the law of Conveyancing from 1285 down to the end of 1884. The work is well done, and the present edition will be as much appreciated by students as former editions have been. It is published by Messrs. Stevens & Haynes, Bell Yard, Temple Bar.

Hints on Stephen's Commentaries. By J. T. Uttley, Esq., Solicitor.—These Hints are for the use of students for the Intermediate. They originally appeared in the columns of a contemporary, and in that form must have been acceptable to students, but we doubt whether students will care to procure them as a bound

volume. As far as they go, the Hints appear accurate. Published by GEORGE BARBER, Cursitor Street, Chancery Lane.

Thoughts on Reform. By J. J. COULTON, Esq., Solicitor.—This little pamphlet has reached its third edition. Mr. Coulton is thorough in his reform; he shrinks not from the most difficult constitutional problems, but for each proposes a remedy. The House of Commons, the House of Lords. County Government, Village Government, all are discussed. His remarks on Local Judicature are certainly worthy of attention. In our last Number we suggested the advisability of having at every quarter sessions a chairman of legal training. We are flattered to find the same suggestion in this pamphlet. It is published by Messrs. KNIGHT & Co., Fleet Street.

Doctrines of Equity affected by the Married Women's Property Act, 1882. By A. F. DOUGLAS, B.A., LL.B., Esq.—This little pamphlet is a reprint of the essay which gained the prize offered by the Students' Legal Correspondence Society. The subject of the essay is not at this date remarkable for its novelty. The author speaks of "the rigour of primitive usage." He surely cannot by "primitive" mean the time of the Saxons; for at the annual meeting of the Law Society last year a member read a learned paper showing that amongst the Saxons the married woman was recognized as a separate individual capable of holding separate property, and that modern legislation merely tends to revert to the law of that period. The pamphlet is, however, a very fair running commentary on the Act, pointing out carefully that one at least of the doctrines, the "restraint on anticipation," remains untouched. It is published by the STUDENTS' LEGAL CORRESPONDENCE SOCIETY.

We have also received for review:

Part III., Vol. 1, of *Cababé & Ellis' Reports in the Queen's Bench Division*, published by Messrs. MAXWELL & SON.

Hunter's Roman Law, published by Messrs. MAXWELL & SON.

Hunter's Introduction to Roman Law, also published by Messrs. MAXWELL & SON.

LAW STUDENTS' DEBATING SOCIETIES.

LIVERPOOL LAW STUDENTS' ASSOCIATION.

An ordinary meeting of this Association was held on Monday evening last, the 23rd ult. at the Law Library, Union Court; Mr. J. Hamilton Gain, Solicitor, presided. After the special business had been disposed of, a debate took place on the following subject: "Does a mortgagee's claim against the executors of a mortgagor cease at the end of six years from the division of assets?" Mr. J. C. Bromfield opened in the affirmative, and Mr. C. B. R. Kent in the negative, and the following gentlemen took part in the discussion:—Messrs. C. H. Wright, T. H. Richmond, R. W. Baxter, and G. A. Forshaw. The Chairman having summed up, put the question to the meeting, and it was decided in the affirmative by a majority of 3. There was a good attendance.

LANCASTER LAW STUDENTS' SOCIETY.

The twenty-second meeting of the present session of this Society was held in the Law Library, Castle Hill, on Wednesday evening, the 18th ult., James Tilly, Esq., Solicitor, in the chair, when the following case was argued:—"A., a trustee, in breach of his trust, sells trust lands to B., and having done so appropriates the proceeds. B. found the title thus: a conveyance to A.'s father in fee, dated thirty-two years before the present purchase. He was informed that there had been no dealing with the property since the conveyance to A.'s father. The fact was, that A.'s father had sold the estate ten years before the present purchase. The estate had since become vested in A. on certain trusts, and the conveyance to his father was one of the title deeds by which he held his trust estates. Can B., at the instance of the *cestui que trust*, be ousted or made to pay the purchase-money over again?" The following gentlemen took part in the discussion:—Messrs. E. G. Clark, J. W. Wearing and L. N. Holden, for the affirmative; and Messrs. J. E. Lambert, J. W. Holt, and M. R. Knowles, for the negative. The chairman summed up and gave his judgment for the negative.

MANCHESTER LAW STUDENTS' SOCIETY.

The eighth meeting of the session was held on Tuesday, the 10th ultimo, at the Law Library, Cross Street, when the chair was taken by C. J. Fleming, Esq., Barrister-at-Law. The subject for discussion was:—"Is it desirable that Trial by Jury should be abolished?" Mr. R. B. Batty opened the debate in favour of the affirmative, and was supported by Messrs. Eltoft and Calvert. Messrs. Humpreys, Davy, Johnson, Rowland and Rowcliffe argued on behalf of the negative contention. After the learned chairman had summed up, the question was put to the meeting, and decided in the negative.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. May, 1885. Part 5.

SOME NOTES.

LORD CAIRNS is dead: the English nation is less a great lawyer and a fine intellect. It is needless to say that the papers have, as usual, outvied each other in fulsome adulation. The greatest lawyer on the English bench, we have read. The same has been written of every Chancellor; such praise is no praise. The deceased ex-Chancellor possessed, it goes without saying, brain and qualities far beyond the average run of legal luminaries, otherwise, of course, he never would have been Lord Chancellor. Strange anomaly, indeed, that so many Past Grand Masters of the cynical profession have been teachers at Sunday schools. In common with other Chancellors his Lordship was noted for his interest in all matters ecclesiastical, and was an ardent supporter, both by word and deed, of Sunday schools and Exeter Hall.

Clerks to justices of the peace and others similarly interested will do well to peruse carefully the regulations which have been issued under the Prosecution of Offences Act, an epitome of which we give in another column. We are not surprised to find that the Director of Public Prosecutions favours that construction of the statute which limits his jurisdiction, and consequently his duties, but we are a little surprised to find that construction approved by the Lord Chancellor and the Secretary of State.

Councillors take note. A resignation under sect. 36 of the Municipal Corporations Act, 1882, cannot, after having been once sent in, be withdrawn. In *Reg.* v. *Corporation of Wigan*, a Mr. Ackerly, who had been elected councillor, sent in a notice that instead of taking the office he would prefer to resign, and sent the fine imposed by the Act on those persons who refuse to take office when elected. The corporation declined to accept this resignation. Ultimately, Mr. Ackerly appears to have been prevailed on to accept office, but the Court held, that having once sent in his resignation he could not withdraw it, and they declared the office vacant.

Strange litigants indeed resort for redress to our Courts of law, but it is startling to find an "Angel" bringing an action against an "Apostle." In *Whitehouse* v. *Woodhouse*, the plaintiff Whitehouse was an "Angel" in the Irvingite Church, and the defendant Woodhouse was the only surviving "Apostle." The "Angel" objected to being placed on the "Register of Lapsed," the effect of which would be to deprive him of his share in the "loaves and fishes," or, in other words, the "sustentation fund;" the facts of the case were of no particular interest except to the parties concerned.

What amounts to receipt and acceptance of goods sufficient to satisfy that relic of antiquity the 17th section of the Statute of Frauds? Well, the facts of *Booth* v. *Murphy* afford an example. Defendant met plaintiff on the road driving a horse. Defendant inquires price; plaintiff names a price; defendant offers a smaller sum, and adds, that if plaintiff will take that sum he can send the horse up to his farm. This plaintiff did; defendant then found horse was "lame," and thereupon refused to pay on the ground that there was no contract sufficient to satisfy the 17th section. But both County Court judge and Divisional Court held that there had been ample receipt and acceptance of the horse on the road. The moral, already well-enforced, don't be in too great a hurry to buy a horse.

The Bench are sorely tried. Fancy being suddenly asked to decide whether one "peptonoid" was an imitation of another "peptonoid" or not. In *The Maltine Manufacturing Co.* v. *Beck & Co.* an injunction was claimed to restrain a trade libel. The whole point involved was whether *Beck's* extract of meat was or was not an infringement of the Maltine Company's beef "peptonoid." Mr. Justice Pearson held that it was not, one being a dry extract of meat and the other a liquid extract.

Another knotty point. Are "crayfish" "fish" or are they not? We do not know whether Mr. Justice Mathew and Mr. Justice Smith are well up in the Billingsgate trade or not. It certainly struck us that the trial of such a point as this ought to have been before a judge sitting with assessors; the assessors being two or more Billingsgate fishwomen. In *Caygell* v. *Thwaite*, defendant was prosecuted under the Larceny Act for attempting to take fish, otherwise than by angling, in a private water. Counsel cited with great effect the case in which it was decided that "oysters" are fish. The Divisional Court overruled the decision of the justices, and held that "crayfish" were "fish," on the ground, as Mr. Justice Mathew said, "that 'crayfish' were 'fish'; he really could not give any better reason." A rather feminine reason, truly.

Most certainly 300*l.* is not too much to recover as damages for the indignity suffered by having an

elephant standing over you and spitting in your face, after having frightened your horse, caused an accident, and made you permanently lame. The owner of the menagerie offered the 300*l.* in satisfaction. Did he apportion it at all in his own mind? If so, how much for the spitting?

Just a little bit hard that decision against the North London Railway Company appears to be to us. Some boys larking about in a railway carriage; one fell against the door and the door flew open; the boy flew out and the train flew on. The unfortunate boy was severely injured and recovered damages against the company. It was proved that there was only one handle on the outside; the door was one which acted with a spring; it seems to have been in proper working order, and to have been properly closed. The boys strenuously denied having opened the door or in any way tampered with the handle; so the company had to pay. Still railway carriage doors are not intended or constructed to resist boys being hurled against them.

Mr. Justice Day has had to decide a very important point. A dissatisfied member of the Masons' Company of the City of London applied for a *mandamus* to compel them to appoint fourteen additional assistants to the Court of Assistants. He contended that the construction of the charter of Charles II. was that there must be twenty-five assistants, and, if the master and wardens thought fit, may be more. The master and wardens contended that, if they thought fit, the discretion given to them meant that there might be fewer. Truly a stupendous point when the importance of the Court of Assistants and the Company of Masons is considered. As his Lordship said: "After perusing the charter it is difficult to imagine the City of London existing without the master, wardens and commonalty of this company." The decision of the Court was that the master must make up the full number of twenty-five assistants, and that he only had a discretionary power to appoint more, not less. What could have induced the plaintiff to have gone to all the trouble of the action to decide this point? Not the fact that the court dined annually with their ladies at Richmond, and for the trouble thereof remunerated themselves with court fees. No wonder that the same names were found figuring over and over again as master and wardens.

Must solicitors be represented in chambers by solicitors? We venture to express no opinion on the construction of the law. But on this we feel strongly, that if there is no statute requiring it, there should be one immediately passed. At first sight, this would appear to have the effect of preventing articled clerks seeing practice; but they might still go as assistants, and let them remember how immensely such an act would operate in their favor in the long run.

If a tradesman sells by mistake something quite different from what was asked for, is he guilty of an offence under the Drugs Act, 1875? A herbalist, in *Knight* v. *Bowers*, gave a woman some savin instead of saffron for which she asked: held by Divisional Court he was guilty of an offence within the Act. Well, in this particular case, as the two are very similar, it is perhaps all right; but it will seem a little ridiculous when a grocer accidentally gives a woman a pound of coffee and chicory, so stated on the outside of the tin, instead of a pound of coffee, that he should be held liable under an Act passed to prevent adulteration, &c. As Mr. Justice Smith said, he doubted whether the legislature intended this; but they had said so.

Now, what does that eminently respectable and conservative journal, the "Law Times," mean by allowing its correspondence column to be filled with letters calling for a new Law Society? The correspondence, shorn of all its wicked envy and discontent, comes to this: that the existing Society has left undone many things that it ought to have done. Then let the malcontents turn their energy in the proper direction: bring pressure to bear on the existing council, and if they do not like the existing council, get another appointed. But, before writing such trash, let them seriously ask themselves what chance of existence has a new Society when the old one only just manages to rub along. The remedy for the burdens under which we groan rests in the hands of every individual solicitor. A society can do little unless supported, not only by subscriptions, but by the active precept and example of each individual solicitor.

We all know the "Law Reports" are not what they ought to be. We all know how vastly superior the "Law Journal Reports" are. But if this fact is as well-known and largely held as the "Law Journal" states, surely it is both unnecessary and in very bad taste to be constantly saying something nasty of the "Law Reports:" in fact, ransacking Europe, Asia and America for adverse criticisms of the "Law Reports." The "Law Journal" in one number has a fling on its own account based on an article in the "Law Quarterly," and then in another place gives an extract from a Canadian Law Paper. If the "Law Journal" does not take care it will succeed in driving the "Law Reports" to improve, and that will not be quite what the "Law Journal" wants. A sound business maxim: Don't tell your trade competitors when they make mistakes.

The "Solicitors' Journal" does good service to the profession by showing in a tabulated form how much plunder we get on a transaction compared with other professions. Take a transaction of 1,000*l.* We get for fees 15*l.*: your surveyor 18*l.* 18*s.*: your architect 50*l.*: your auctioneer 27*l.* 10*s.* We go for being an auctioneer. No examinations, no skill required, and the best pay, bar the architect, who is very properly remunerated for his skill. Evidently we still do not keep our proper share of that oyster yet.

That article in the same journal entitled "Officers of the Court," and beginning "Solicitors are officers of the Court," might have been summed up in a few lines. They are when the judges want to drop on us, or tell us we are blackguards, but we don't hear much about it when we want a privilege or wrong redressed. Is it not about time that we ceased our connection with this same Court; we have a sort of fancy we might have a better time of it.

Oh! innocent "Echo." It fails to see "what influence a free breakfast to voters in the east of London can have on voters in the west." None at all, unless the M.P. for the west borough gives a breakfast to the voters of the eastern borough on the implied condition that the M.P. for the eastern borough gives a free breakfast to the voters of the western borough. We do not say that this is so; we only uncharitably suggest it as a possible evasion of that very stringent statute—the Corrupt Practices Act.

The sum of 50*l.* is certainly not too much to recover as damages for false imprisonment, in consequence of being falsely accused of theft at the Derby. In *Bess* v. *Crock*, plaintiff, it appeared, had been locked up all night in a cell with four men and a monkey. Darwin's theory to the fore. The higher education of the ape is, indeed, advancing when he gets locked up with four humans for being drunk and disorderly at the Derby.

Foreigners have a rooted idea that John Bull invariably sells his wife at Smithfield when he gets tired of her. Pity that the idea is not true, say some malcontents. It must be confessed that a recent application to Mr. D'Eyncourt, at Westminster, goes far to prove that we sell our babies. A woman applied to the magistrate for advice. She had bought an illegitimate child from its mother, and now that the child was getting amusing the mother claimed to have it returned. The purchaser objected and produced the document of title, a formal deed of purchase, drawn by a lawyer, to which the purchaser's husband was party and by which provision was made for the future of the child. Mr. D'Eyncourt was not certain whether the contract was a good one; but assured the plaintiff that the child could not be forcibly taken away. This point must really be definitely settled. Can we or can we not legally sell our babies? We are really most anxious to know. Will Prideaux supply a precedent for the conveyance of a baby with all appurtenances, and Snell inform us whether the purchase of a baby at auction will be upset by the Chancery Division on the ground of undervalue?

It is, indeed, pleasing to find that a landlord who allows drains in his house to remain in a defective state of repair, is occasionally made liable for the damages that ensue to health. In the recent case of *Chichester* v. *Lance*, the plaintiff succeeded in recovering damages for injury to health due to bad drains.

More evidence of the diminution of crime in the country. Mr. Justice Field in the Carnarvon commission had not a single prisoner to try from Denbighshire. Two sides to every question, says the cynic—the police are evidently not up to their work in Denbighshire.

Are all the photographers who have photographed Miss Mary Anderson going to claim a copyright in their negatives? We assume if photographer A. and photographer B. were to both photograph that charming actress in precisely the same position and dress, A. could not bring an action against B. for infringement of copyright. It seems to us that the beautiful original has submitted to the operation so frequently that she must have exhausted the number of different postures and poses necessary to give each photographer a copyright. We see Van der Weyde has summoned another man for an infringement of his copyright in a photograph of Miss Anderson, which had been reproduced in china plaque. We have seen that china plaque ourselves in his gallery, and have desired not only to infringe it, but to walk off with it and cherish it as a memento of that most beautiful American actress.

By the way, in whose name, we wonder, was the summons taken out? We must not forget the little decision of *Jackson* v. *Nottage*. If Mr. Van der Weyde took that summons out in his own name, it should have been dismissed. The absolute operator who took the photograph is the proprietor; or, stay, would it not rather be the man who reproduced it on china plaque?

We shall really be very pleased, in the interest of the public at large, to place the "Dailies," both morning and evening, on our free list. Their ideas of law are really most peculiar. The other evening, our editorial duties finished, we were strolling homewards. Our attention was suddenly arrested by a placard bearing the words "Important Legal Decision." Ever on the watch to gather information.

we recklessly laid out one halfpenny on an "Echo." We found the decision to be a judgment of Mr. Justice Chitty, that the fourteen days from the first meeting to the confirmatory meeting necessary to reduce the capital of a company, must be fourteen *clear* days. Thinking the "Echo" must have missed a point somewhere, we purchased "Globe," and "Pall Mall Gazette," only to find exactly the same information. Now really this is *not* an important decision. Any reasoning man would know that if the Act says fourteen days it does not mean thirteen-and-a-half days; besides, do not our learned contemporaries know that the point has already been decided. Again, where is the great importance?

Curious, indeed, are the disputes that come before judges: we doubt if any more curious case has occurred than that which recently came before the consular judges at Bordeaux. The plaintiff, a man without arms or legs, was on exhibition at Bordeaux, and described himself on his posters as an "artist trunk." Another similar remnant of humanity started opposition, described the plaintiff as a mockery and a sham, and himself as the "true artist trunk," and these two "trunks," or rather, we suppose, their proprietors, absolutely went to law. In the end defendant was allowed to call himself a "trunk" but not an "artist trunk." We saw this curious case in the "Globe." We wonder if our contemporary can vouch for it. The story would be quite reasonable if it hailed from America, but not from France.

We have always been well aware that it is sinful to smile in church; our mothers have told us that; the punishment we always thought was being handed over to the tender mercies of that august official, the beadle. It seems, however, when we attain years of discretion the punishment for smiling in church is a fine of 5*s*. A well-known merchant ventured the other day, while in church, to remark to a friend that "the choristers looked well in their night-shirts," referring to their surplices. The remark caused a smile; the smile cost 5*s*., being held to be "brawling." The smile was really uncalled for; there was nothing funny in the remark; but was not the punishment also uncalled for?

It is only fair to mention that the decision was upset on appeal; so that we may still look amiable when in church without being fined for smiling.

Some remarks on the recent Examinations will be found in another column. Those of our readers who have perused the questions and answers contained in our Supplements will feel convinced that students for the Final who would make certain of success must read widely and well. The Examiners of the Law Society are now keeping pace with the times, and much more diligent work is needed now-a-days to obtain a mere Pass at the Final than ten years ago was required for Honors.

Had a writ of *habeas corpus* been granted to allow Mrs. Weldon out of prison to plead her own cases, a grand prospect would have been open to all criminals. A man likely to be imprisoned for some act of wickedness he is about to perpetrate, might have instituted a Chancery action against some person, conducted it himself, and then, as soon as he was sent to gaol, apply for a writ of *habeas corpus* to be allowed to come out to plead his own case.

CASES OF THE MONTH.

I.—GENERAL CASES.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXVIII., where further details of the case may be found.

The references at the foot of each case under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., and Tudor, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, and Tudor's Conveyancing Cases, and indicate the page at which a note of the decision should be entered.]

Can the Court dispense with the concurrence of the husband to a deed-conveyance by a married woman which requires acknowledgment under 3 *&* 4 *Will.* 4, *c.* 74 *?*

A. B., a married woman, In re.

(T. 395.)

Power is conferred on the Court to do so in a proper case by sect. 91 of the Act, and in the above application the power was exercised, it being shown that the husband had not been heard of since 1874, when he went to Adelaide in Australia to obtain work, and his wife went to live with her parents in New South Wales. The evidence showed that up to the time of the separation the husband and wife had lived on affectionate terms.

Can a solicitor acquire a lien on the books of a registered company?

Anglo-Maltese Hydraulic Dock Co. (Limited), In re.

(T. 392.)

He cannot acquire a lien on those books which ought to be kept at the registered office of the

company; but on all other books a solicitor might acquire a lien for costs accrued before the winding up as against the liquidator in winding up as well as against the company itself. This was the proper explanation, decided Kay, J., of *The Capital Fire Insurance Association.*

(6 Fisher, p. 1942; Emden's Company Law, p. 93.)

A., B. and C. gave a joint guarantee to secure a debt to a bank. Does the death of A. put an end to the guaranty?

Ashby v. Day.

(W. N. 67; S. J. 356; L. J. 63.)

Not necessarily, decided Bacon, V.-C. in the above case, where three directors of a company gave a guarantee to a bank to secure the company's account with the bank up to 2,000*l.* One of the guaranteeing directors died, and after his death the company went into liquidation owing the bankers money, and it was held that the surviving directors were, under the circumstances, liable on the guarantee.

(6 Fisher, p. 186; Shirley, p. 13.)

If a father advances money in his lifetime to his son to enable the latter to pay a debt, on the father's death intestate must the son bring the amount advanced into hotchpot?

Blockly, In re, Blockly v. Blockly.

(W. N. 75; L. J. 72.)

The late Master of the Rolls, in *Taylor* v. *Taylor* (L. R., 20 Eq. 155), expressed an opinion that money advanced to a child to enable a debt to be paid, could not be treated as an advancement. But in the above case, where a father was shown to have advanced by cheque to his son 1,200*l.* to enable his son to pay a debt of that amount (which cheque was duly cashed, and after its return through the bankers the father had handed it to his son and told him that he would make no further claim in respect of the loan), Chitty, J., said that he could not agree with the above opinion of Jessel, M. R., but that the 1,200*l.* must be taken as an advancement, and the son could not be allowed to share under the intestacy without accounting for the 1,200*l.* This follows the decision of Wood, V.-C., in *Boyd* v. *Boyd*, L. R., 4 Eq. 305.

(Wms. P. P., p. 558.)

Can a person who has agreed to take a partly furnished dwelling-house on a seven years' lease, repudiate the contract if the water supply for the house fails?

Chester v. Powell.

(W. N. 67; L. J. 63.)

In the absence of misrepresentation as to water, whereby the tenant was induced to accept the premises, he cannot, decided Bacon, V.-C., repudiate the lease merely because the water supply fails. True there is an implied warranty on the letting of a furnished house, that the house is habitable, as shown by the leading case *Smith* v. *Marrable* (11 M. & W. 5; and Shirley's Cases in Common Law); but such a warranty only applies to furnished houses or lodgings let for a short term.

(4 Fisher, p. 1681; Indermaur's C. Law, p. 76; Shirley, p. 107.)

A. and B., married women, are trustees of real property for sale, and are also beneficially interested in the proceeds. The trust property is sold under an order of the Court. Must the conveyance to the purchaser be acknowledged by A. and B. under 3 *&* 4 *Will.* 4, *c.* 74, *as read with sect.* 7 *of* 45 *&* 46 *Vict. c.* 39? *A. was married before, and B. after,* 31*st December,* 1882.

Dockra, Re, Dockra v. Faith.

(S. J. 385; L. J. 70.)

Without deciding whether the Married Women's Property Act, 1882, enables such a conveyance to be executed by the trustees as if *femes sole*, Bacon, V.-C., held, that as the Court had taken upon itself the conduct of the sale, A. and B. had no duties to perform, except to obey the order of the Court, and so were "bare trustees," and could convey by an unacknowledged deed under sect. 6 of the Vendor and Purchaser Act, 1874.

(Greenwood's Statutes, p. 201.)

If the Court orders a deed to be executed by some party to an action, and the party refuse to execute the deed, what course is open to the Court?

Edwards, In re, Owen v. Edwards.

(W. N. 74.)

Formerly, the only course open to the Court was to imprison the disobedient party for contempt, and keep him in prison until he purged his contempt by executing the deed. But now, by

sect. 14 of the Judicature Act, 1884 (see Law Notes, Vol. III. p. 300), the Court may order some person to execute the deed instead of the party named; and in the above case the defendant, Jane Edwards, refusing to execute a mortgage as directed by the Court, the chief clerk was directed to execute it for her.

Is a solicitor entitled under the Remuneration Order to preliminary expenses in connection with the negotiation for a lease which is subsequently granted?

Field, In re.

(W. N. 68; S. J. 358; L. J. 70.)

Chitty, J., decided that under Schedule I., Part II. rule 2 (*c*), no charge for interviews and negotiations in reference to the preparation of a preliminary agreement which contained the terms on which a lease was afterwards granted, can be allowed on taxation.

If A. makes a post-nuptial settlement of onerous leaseholds, and also of pure personally sufficient in value to indemnify the trustees of the settlement against loss, can A., under 27 Eliz. c. 4, defeat the settlement as to the leaseholds by subsequently assigning them to a purchaser for value?

Foster, In re, Foster v. Foster.

(L. J. 73.)

Kay, J., decided, on the authority of *Price* v. *Jenkins* (46 L. J., Ch. 805) and *Re Lulham* (53 L. J., Ch. 928, and Law Notes, Vol. III. p. 262), that he could not do so; the onerous character of the leaseholds prevented the settlement being voluntary, and the mere fact that other property was comprised in the settlement sufficient to indemnify the trustees in respect of the liability under the lease made no difference.

(Snell, p. 77; Aids to Equity, p. 20.)

Can the Court on the ground of mistake rectify a settlement which has been enrolled under 3 & 4 *Will.* 4, *c.* 74?

Hall Dare v. Hall Dare.

(W. N. 67; S. J. 356; L. J. 73.)

Bacon, V.-C., considered that in such a case he had no jurisdiction to grant any relief; sect. 47 of the Act contained a positive prohibition against the Court exercising in the case of enrolled deeds the jurisdiction possessed by it in other cases.

(Snell, p. 456; Aids to Equity, p. 120.)

Is an "overlooker" a workman within the Employers' Liability Act, 1880?

Leech v. Gartside & Co.

(T. 391.)

The plaintiff was an overlooker of looms in the defendants' mills, and his duties were to keep the looms in proper order, to execute small repairs, to put the warps in, and generally to see that the looms were in working order. This superintendence took about half his time, and the rest of his time was occupied in manual labour. While engaged in overlooking, a shuttle flew out, and put out one of the plaintiff's eyes and injured the sight (by sympathy) of the other. The evidence showed that complaints had been made to the manager that the looms were too weak, and that the shuttles could not be kept in, and further, that under the same manager there were no less than 2,000 looms and 27 overlookers. The plaintiff sued under the Act of 1870, and the preliminary objection was taken that he was not a "workman" within the meaning of the Act. But the Divisional Court held that, as his work was for the most part manual, he was a "workman," and entitled to sue under the Act, and so our question is affirmatively answered.

(5 Fisher, p. 206; Shirley, p. 268; Indermaur, p. 379.)

Can the executor of a sole trustee appoint a new trustee under sect. 31 *of the Conveyancing Act,* 1881, *that is to say, is such an executor the personal representative "of the last surviving or continuing trustee" within the meaning of that section?*

Shafto's Trusts, In re.

(W. N. 75.)

Pearson, J., thought that the executor could make the appointment, but as the petitioners requested the Court to appoint a new trustee, the learned judge himself made the appointment under the Trustee Act, 1850. Consequently the question we have set out has not yet been definitely settled.

(Enter as a note to sect. 31 of the Conveyancing Act, 1881.)

Do shares allotted in payment of a "bonus dividend" belong to the tenant for life or to the remainderman?

Sproule v. Bouch.

(S. J. 354; L. J. 62.)

This question arose under the will of one William Bouch. The testator bequeathed 600

shares in a certain iron company to his executor upon trust to pay the income to his widow for life, with remainder to the executor absolutely. In 1880 the company, having some 100,000*l.* as a reserve fund and a sum of 38,000*l.* derived from undivided profits, declared a bonus of 2*l.* 10*s.* per share of 10*l.*, to be paid by the issue of one new 10*l.* share for every three held by each shareholder, so that the new shares should be issued as paid up to the extent of 7*l.* 10*s.*, like the rest of the shares of the company. On the 600 shares held by the executors 1,500*l.* was payable as "bonus dividend" and profits, and was paid by the issue of 200 new 10*l.* shares. Some of the 38,000*l.* had been earned during the testator's lifetime and some since his death. These being the facts, the question arose whether the 200 new shares belonged to the tenant for life or must be regarded as capital, so as to entitle the tenant for life only to the dividends on the shares. The Court of Appeal (reversing the decision of Kay, J.), held that the tenant for life was entitled to the shares, since the company had not, prior to the distribution, done any act to make the accumulated profits part of their capital. The way of dealing with the profits, namely, carrying the profits to the reserve fund and to an account of undivided profits, did not operate to capitalise the profits. Further, the mode in which the "bonus dividend" had been paid did not operate to make it capital. No doubt, said the Court, the two operations, viz. the payment by the company of the dividend and payment of the call on the new shares, were arranged so that they might take place together, yet a shareholder who refused to take the new shares would have been entitled to recover his dividend from the company. Consequently, the new shares must be regarded as dividend.

(Fisher, p. 419; Wms. P. P., 12th ed. p. 427.)

If, on the death of a surviving trustee of real property there is no legal personal representative within the meaning of sect. 30 *of the Conveyancing Act,* 1881, *and the Court, on application under the Trustee Act,* 1850, *appoints a new trustee, in what form must the order be drawn up?*

Rackstraw's Trusts, In re.

(T. 388; W. N. 74; L. J. 74.)

Without deciding the difficult question as to what becomes of the legal estate between the death of the trustee and the appointment of the new trustee, Kay, J., made an order in the above case, vesting in the new trustee appointed "all the estate and interest which the deceased trustee had in him at the time of his death." Compare *In re Pilling's Trusts*, 26 Ch. D. 432.

(Enter as a note to sect. 30 of Conveyancing Act, 1881.)

Can an administrator retain a debt due to him or her, under a contract which, owing to sect. 4 *of the Statute of Frauds, could not, for want of writing, be enforced by action?*

Rownson, In re, Field v. White.

(W. N. 67; S. J. 353; L. J. 63.)

The Court of Appeal unanimously said "no" to this question. An executor or an administrator could only pay himself in a case where, had he not been executor, &c., he could have sued the executor for his debt, and as, in the case stated, he could not maintain an action for his debt, he could not retain. There is an exception existing to this rule, namely that an executor, &c. can retain a statute-barred debt. But this was an anomalous case, and the exception must not be extended. So, in this case, the administratrix could not retain a debt of 500*l.* which the deceased had, in consideration of marriage, *verbally* promised to give her.

(6 Fisher, p. 1646; Snell, p. 281; Aids to Equity, p. 66.)

Is a solicitor entitled under the Remuneration Order to be paid for the perusal of abstracts at the rate of 1*s. per folio, or at the old rate of* 6*s.* 8*d. per three sheets?*

Parker, In re.

(W. N. 68; S. J. 358; L. J. 65.)

Chitty, J., held that the remuneration for the perusal of abstracts remains unaffected by the Remuneration Order, and, consequently, that the charge to which a solicitor is entitled is still 6*s.* 8*d.* for every three sheets of abstract perused. The term "other documents" used in the second schedule to the Order, does not include abstracts. The perusal of abstracts was, the learned judge said, rather of a mechanical kind, since abstracts were, for the most part, laid before counsel for advice; and, in his opinion, from the wording of the rules, it was not the intention of the framers

thereof to increase the solicitor's remuneration; and the judge's opinion was justified by the practice of the taxing masters, it having been ascertained that of the six masters to whom the question had been referred, five of them allowed the old scale and one only allowed the new scale.

A., born in Scotland in 1792, *joined the British army in* 1810. *He sold out in* 1860, *and resided in England from that time until his death in* 1882, *sometimes living in lodgings and other times in hotels. A. never revisited Scotland after* 1810. *Was A.'s domicile Scotch or English?*

Patience, Re, Patience v. Main.

(T. 375; W. N. 68; S. J. 356; L. J. 64.)

Chitty, J., held that the Scotch domicile remained. Residence by itself in another country, however long it might be, did not constitute domicile, and until a new domicile—a domicile of choice—was acquired, the original domicile remained. Had the deceased purchased real estate in England (even a grave), or married and brought up a family in England, it might have been held that he had acquired an English domicile.

(4 Fisher, p. 971; Dixon's Divorce, p. 48; Harrison, p. 105.)

Pettybridge v. Barrow.

The decision in this case, noted in Law Notes, Vol. III. p. 167, has been reversed on appeal, the Court holding that the transaction amounted to an imperfect gift, and not to a declaration of trust.

Must a petition for confirmation of a resolution for the reduction of capital be advertised in a case where it is not intended to make any return of capital to the shareholders, but merely to reduce the nominal capital by writing off capital?

Tumbracherry Estates Co., In re.

(T. 379; S. J. 353.)

Primâ facie, said the Court of Appeal, such a petition ought to be advertised, for who was to show the Court that the proposed reduction would not injure the creditors if no notice of the application was given? But the matter was in the discretion of the judge before whom the petition was heard, and if satisfied that no one could possibly be injured he was at liberty to hear the petition without its having been previously advertised.

(2 Fisher, p. 412; E. Smith's Company Law, 2nd ed. p. 18.)

II.—PRACTICE CASES.

[The references under Fisher, Snow, Stoney and Gibson, are respectively made to the last editions of Fisher's Digest, Snow & Winstanley's Annual Practice; Stoney & Andrews' Judicature Practice, and Gibson & McLean's Practice of the Courts. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

Within what time must an application for a new trial of a suit for dissolution of marriage be made?

Ahier v. Ahier.

(W. N. 78; S. J. 397.)

This *vexata quæstio* came before the Court of Appeal for, we believe, the first time under the Judicature Practice in the above case. Formerly these applications were made to the full Court of Divorce, and the time for applying was within fourteen days after the decree nisi under sect. 2 of 23 & 24 Vict. c. 144. By the Judicature Act, 1881, s. 9, the jurisdiction of the full Court was transferred to the Court of Appeal, to which latter Court accordingly applications for a new trial of a divorce suit are now made. But within what time? The time for applying to the Court of Appeal from interlocutory orders of the High Court is by Ord. LVIII. twenty-one days; but as the Judicature Practice does not apply to divorce proceedings (sect. 18 of the Judicature Act, 1875), it was doubtful whether this time of twenty-one days applied, or whether the time was still fourteen days under the 23 & 24 Vict. c. 144. The Court of Appeal held that the Judicature times did not apply, and that the application must be made within fourteen days. The Judicature Act, 1881, had merely substituted the Court of Appeal for the full Court, but had not altered the time within which applications must be made.

(5 Fisher, p. 1967; Dixon, Divorce, p. 313; Harrison, p. 181; Gibson, p. 337.)

Under what circumstances will the Court, pending an appeal, grant a stay of execution?

Chester v. Powell.

(T. 390.)

Only where it can be shown that irreparable injury will result if the order be not made. If the money paid under the judgment were likely to be lost, the Court of Appeal said that execution would generally be stayed. But when it was admitted, as in the above case, that the parties were perfectly substantial people, there was no need of a stay of execution, since if the appeal was suc-

cessful the money paid under the judgment would be repaid.

(Snow, p. 622; Stoney, p. 446; Gibson, p. 257; Ord. LVIII. r. 16.)

If a garnishee fails to pay the debt, can the judgment creditor obtain an order for his examination under Ord. XLII. r. 32, to ascertain what debts the garnishee has owing to him, &c.?

Cowan & Co. v. Cartell.

(W. N. 76; L. J. 72.)

The judge at chambers doubted if the order applied to the case of a garnishee, and refused to make an order allowing the garnishee to be examined. On appeal, however, to the Divisional Court the order was obtained, and so our question is answered in the affirmative.

(1 Fisher, p. 484; Snow, p. 500; Stoney, p. 351; Gibson, p. 240; Ord. XLII. r. 32.)

Can an action commenced in an inferior Court under the Employers' Liability Act, 1880, be removed to the High Court under sect. 39 of 19 & 20 Vict. 108?

Claxton v. Lucas & Co.

(W. N. 76; S. J. 357; L. J. 67.)

The Divisional Court decided the question in the negative, since the above section can only be held to apply to actions which might be commenced in the High Court, and not to actions which must be started in an inferior Court. The only mode in which an action under the Employers' Liability Act, 1880 (which must be commenced in a County Court), can be removed to the High Court is by *certiorari*, obtained on application under the provisions of that Act.

(4 Fisher, p. 206.)

Is the right of a successful defendant to double costs under sect. 105 of 8 & 9 Vict. c. 100, taken away by Ord. LXV. r. 1?

Hesker v. Wood.

(T. 390.)

The Divisional Court held that the Judicature Rules had not altered the law as to double costs allowed under sect. 105 of 8 & 9 Vict. c. 100, to a public officer who had successfully defended an action brought against him for work done by him in pursuance of the statute 8 & 9 Vict. c. 100.

(Snow, p. 662; Stoney, p. 470; Gibson, p. 245; Ord. LXV. r. 1.)

Must an application to the Court of Appeal for the new trial of a cause in the Divorce Court be on notice to the other side, under the Judicature Act, 1881, s. 9, and the Judicature Rules, 1883 (Ord. XXXIX. r. 1 and Ord. LVIII. r. 10), or ex parte for a rule nisi according to the old practice under the Divorce Rules?

Saunders v. Saunders.

(T. 375; S. J. 354; L. J. 63.)

The point has not yet been settled, but in the above case, three judges of the Court (Cotton, Bowen and Fry, L.JJ.), after hearing an *ex parte* application, stated that in any future case the applicant for a rule *nisi* must be prepared to argue the question whether that was the proper mode of applying. This case was decided before *Ahier* v. *Ahier*, *supra*. The latter case seems to show that the old divorce practice as to the mode of applying remains.

Will the Court as a matter of course make an order on an application by a plaintiff under Ord. XVI. r. 11, to join a person as co-plaintiff?

Walcott v. Lyon.

(S. J. 385.)

The order will only be made where the applicant shows that the case falls within the scope of the rule, that is, the applicant must show that the order is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter. In the above case, the plaintiff, as tenant for life under a will, sought to make the defendant responsible for a breach of trust, and the defendant by way of defence pleaded that the plaintiff had concurred in the breach. Thereupon the plaintiff applied for an order to join his son, who was entitled in remainder under the will, as co-plaintiff, but the Court of Appeal said that the application must be refused, since the son was not a necessary party to enable the Court to decide whether or not the trustee was liable to the plaintiff.

(Snow, p. 208; Stoney, p. 156; Gibson, p. 64; Ord. XVI. r. 11.)

When a judge in chambers refers a matter to the Court, should the applicant apply to the Court of Appeal or to the Divisional Court?

Weldon, Ex parte.

(T. 394.)

The Court of Appeal, without deciding that that Court could not in any case entertain jurisdiction to hear the application, said that the proper remedy was to go to the Divisional Court.

If a plaintiff appeals from an order directing him to give security for costs, will he be compelled to give security for the costs of his appeal?

Willmott v. The Freehold House Property Co.

(W. N. 65; S. J. 354.)

In a proper case the Court of Appeal will direct security to be given, and in the above case 5*l.* was ordered to be paid as security for the appeal costs. It is not, however, said the Court of Appeal, usual to order security to be given in such cases.

(1 Fisher, p. 163; Snow, p. 621; Stoney, p. 442; Gibson, p. 97; Order LVIII. r. 15.)

III.—BANKRUPTCY CASES.

[The references under Fisher, Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Fisher's Digest, Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

Has a solicitor audience in a Divisional Court of the High Court on the hearing of an appeal from a decision of the County Court (in bankruptcy)?

Barnett, John, Re.

(S. J. 357; L. J. 192.)

Under the Bankruptcy Act of 1869, at the hearing of appeals by the Chief Judge in bankruptcy from the local Bankruptcy Courts, solicitors were allowed to represent the litigants, and the question in the above case was whether this right of audience was preserved by sect. 157 of the Bankruptcy Act, 1883, which provided (*inter alia*) that "all solicitors or other persons who had the right of audience before the chief judge in bankruptcy shall have the like audience in bankruptcy matters in the High Court." Now, when this section was enacted, it was intended that the appeals from local Bankruptcy Courts should go to the Court of Appeal and not to the High Court, and it was so enacted by sect. 104, sub-sect. (a). But by the Bankruptcy Act, 1884, these appeals were directed to be taken to a Divisional Court of the High Court, one of the judges of which Court was to be the judge to whom bankruptcy business is assigned. The Divisional Court decided that an appeal from a local Bankruptcy Court was clearly a "bankruptcy matter in the High Court," and, therefore, that solicitors had audience in such appeals; and so our question is answered in the affirmative.

(1 Fisher, p. 693; Robson, p. 57; Y.-Lee, p. 556; Williams, p. 343; Baldwin, p. 7; Ringwood, p. 6; Sect. 151.)

Have the creditors of a deceased person, with regard to whose estate administration proceedings have been commenced in the Chancery Division, a right to have the proceedings transferred into the Bankruptcy Court under sect. 125 of the Bankruptcy Act, 1883, when they can show that the estate is insolvent?

Higgs v. Weaver.

(W. N. 74; S. J. 356.)

The transfer under this section is in the discretion of the Chancery judge (subject, of course, to appeal), and was in the above case refused. The assets were 500*l.*, and the debts 1,000*l.*; many expenses had been incurred in Chancery chambers, and Pearson, J., thought that under the circumstances it would be better not to make the order, but to retain the administration in the Chancery Division; were the order made, all the expenses already incurred would be absolutely thrown away.

(Robson, p. 416; Y.-Lee, p. 541; Williams, p. 392; Baldwin, p. 333; Ringwood, p. 140; Sect. 125.)

A sheriff by virtue of five writs of execution takes possession of the goods of A. The first writ received was for 41l., the second writ for 6l., the third for 47l., the fourth for 34l., the fifth for 12l. 13s. The sheriff sells the goods for 89l. 19s. Within fourteen days of the sale notice of bankruptcy proceedings against A. is given to the sheriff, and A. is subsequently adjudicated bankrupt. To whom must the sheriff hand the proceeds of sale?

Pearce, In re, Crosthwaite, Ex parte.

(T. 373; S. J. 357; L. J. 68.)

Owing to the provisions of sect. 46 of the 1883 Act, it is clear that the first execution creditor had

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no claim to the money, nor the third nor the fourth, since these executions were for sums exceeding 20*l.* . But had the second and the fifth any claim to the proceeds as against A.'s trustee in bankruptcy? Cave, J., held that, as the execution had been completed by seizure and sale within sect. 46, and as the money realised was sufficient to pay the second as well as the first execution, the second execution creditor was entitled to his 6*l.*; but that as the money realised was not sufficient to satisfy the third writ, the sheriff had not sold under the fourth and fifth writ, and consequently that the fifth execution creditor although his execution was for a sum not exceeding 20*l.*, and so was not within sect. 46 *supra*, yet as his title had not been completed by sale within the meaning of sect. 46, he had no claim to the balance of the proceeds which were ordered to be paid to the trustee of A.

(Robson, p. 375; Y.-Lee, p. 412; Williams, p. 221; Baldwin, p. 222; Ringwood, p. 34; Sect. 46; and compare with *Lovering, Ex parte, Re Peacock*, L. R., 17 Eq. a case within the Act of 1869.)

Can the Court refuse to confirm a resolution for composition passed bonâ fide in the interests of the creditors?

Wallace, In re.

(T. 392.)

In this case the creditors of a person against whom a receiving order had been made agreed to accept a composition of 1*s.* in the £. It appeared from the official receiver's report that the debtor in 1877 had been adjudicated a bankrupt, and that his estate paid only 4½*d.* in the £; and that in 1881 he had filed a petition for liquidation, when his liabilities were stated to be 10,000*l.*, in respect of which no dividend had been paid. The report further showed that during the three years immediately preceding the bankruptcy the debtor had not kept such books as to disclose sufficiently his business transactions and his financial position, and that it appeared that while the debtor's earnings during the three and a-half years preceding the bankruptcy had been 2,727*l.*, his expenditure had amounted to some 4,200*l.*, and that in the receiver's opinion the Court ought to refuse to sanction the composition. The registrar adopted the receiver's contention, and refused to approve the resolution, stating that under the Act of 1869 the main question was whether the resolution was in the creditors' interest, but under the Act of 1883 a different regime was established, and in the registrar's opinion it was the intention of the Legislature to do away with small compositions, and in the present case not only was the composition very small, but the report showed that the debtor's living had been extravagant, and, as the guardian of public morality, it was the duty of the Court to refuse confirmation of the resolution. Consequently our question is answered in the affirmative.

(1 Fisher, p. 1374; Robson, p. 807; Y-Lee, p. 98; Williams, p. 56; Baldwin, p. 338; Ringwood, p. 47; Sect. 18.)

Does the calling together of a private meeting of creditors and the presentment to them of a statement which shows that the debtor is insolvent constitute a notice of suspension of payment within the meaning of sect. 4, sub-sects. (1) (b) of the Act of 1883?

Walsh, In re, Jones, Ex parte.

(S. J. 357.)

This alone would not amount to a notice of suspension the Divisional Court decided, on the principle of *Oastler, Ex parte* (Law Notes, Vol. III. p. 235). If at the meeting there was a definite intimation of the debtor's intention to suspend payment, that would constitute an act of bankruptcy within the above sub-section, but nothing short of this would suffice.

(2 Fisher, p. 753; Robson, p. 196; Y-Lee, p. 11; Williams, p. 27; Baldwin, p. 66; Ringwood, p. 39; Sect. 4, sub-sect. (1) (b).)

IV.—CRIMINAL CASES.

[The references under Harris, Stephen, Harrison, and Stone are respectively made to the last editions of Harris' Criminal Law, Stephen's Digest of the Law of Crimes, Harrison's Guide to Crimes, and Stone's Justices Manual.]

Are "crayfish" fish within the meaning of 24 & 25 Vict. c. 96?

Caygill v. Thwaite.

(T. 386.)

The defendant was charged under the above statute with taking crayfish otherwise than by angling in a river, not tidal, in which he had no right to fish. The mode of fishing was by a piece of flesh meat fastened to a string attached to a stick, which he dropped into the river. The magistrates decided that they could not convict,

as crayfish are invertebrate animals and a species of crustacea, and not fish within the meaning of the Act. A "case" was, however, stated by the magistrates, and the Divisional Court held that crayfish were fish, and that shell, as well as other fish, were within the spirit of the Larceny Act, and therefore that a conviction ought to have taken place.

(Stone, p. 479; Harris, p. 206; Harrison, p. 70.)

A., a herbalist, being asked by B. for "saffron," sells to him by mistake "savin." The article sold was perfectly pure but poisonous. Can A. be convicted under sect. 6 *of the Sale of Food and Drugs Act,* 1875?

Knight v. Bowers.

(T. 390; S. J. 385.)

Under this section any one selling an article which is not of the nature, substance or quality of the article demanded by the purchaser, is liable to be prosecuted and convicted of having committed an offence under the Act; and in the above case the question which we have set out arose, and it was held by the Divisional Court that A. ought to have been convicted by the justices, since the section applies not only to the sale of an adulterated article, but also to the sale of an article which, though pure in itself, is not the one demanded by the purchaser.

(Stone, p. 257; Harris, p. 144; Harrison, p. 130.)

V.—PROBATE, DIVORCE, ADMIRALTY AND ECCLESIASTICAL CASES.

[The references under Dixon, Coote, Dixon's Div., Browne, Roscoe, Smith's Ad., Smith's Ecc. and Harrison are respectively made to the last editions of Dixon's Probate, Coote's Probate, Dixon's Divorce, Browne's Divorce, Roscoe's Admiralty, Smith's Admiralty, Smith's Ecclesiastical Law and Harrison's Probate and Divorce.]

Has a person who has supplied a foreign ship with necessaries a maritime lien on the ship therefor?

Heinrich Bjorn, The.

(W. N. 35.)

It is laid down in the text books that necessaries supplied to a foreign ship give a maritime lien. (See Roscoe's Admiralty, 2nd ed. p. 75, and Smith's Admiralty, 3rd ed. p. 79.) But in the above case the Court of Appeal said that "after an examination of the cases and the statutes there was no maritime lien for necessaries against a foreign ship," and so our question is answered in the negative.

(Roscoe, p. 75; E. Smith, Admiralty, p. 79.)

Under what circumstances will the Court of Appeal reduce the amount of salvage awarded by the judge of the Admiralty Court?

The Ship Carranza.

(T. 379.)

Only where "the judge, in estimating the amount to be awarded, had miscarried by allowing his judgment to be influenced by something which ought not to have influenced it at all, or else either by giving undue consideration, or by failing to give due consideration to some circumstance fairly within his consideration." This rule was laid down in "The Amerique" (L. R., 6 P. C. 472), and was expressly recognized and followed by the Court of Appeal in the above case.

(6 Fisher, p. 1634; Roscoe, p. 25; Smith, p. 100.)

THE DOCTRINE OF *CUMBER* v. *WANE*.

In an age, the spirit of which is to explode all musty and ancient theories, which rest upon principles which do not still continue to have a practical basis, it is strange to find that the old distinction between an agreement under seal, and one not under seal, viz., that the former imports a consideration, while the latter does not, and, without such a consideration is a mere *nudum pactum*, and void on that account, is still maintained. There does not seem to be at the present day any clear reason why a man who has made two similar agreements, under precisely similar circumstances, should be bound by the one and not by the other, merely because there happens to be a seal attached to one, while the other is only under his hand. Why should the fact that a mere unmeaning formality has been gone through make that good in the one case which is not good in the other, because that formality has not been observed? In the good old days, when writing was an uncommon accomplishment, and the execution of a deed was a thing that occurred once only in a man's lifetime, and was looked on as a most solemn and important matter, when a man affixed his own seal to the deed with the accompaniment of the most imposing formalities, there was indeed ground for

thinking that he would not be likely to undertake anything of so solemn a nature, without having for a long time previously given careful forethought as to the consequences of his act. He would most likely have spent many sleepless nights counting the costs of what he was about to do. The execution of a deed would be to him one of the most critical events of his whole lifetime. But the same man would not think so much of making a mere verbal promise, or even of giving a written undertaking. In these cases there were no solemn observances to be kept, and no reason to induce him to reflect seriously, and consider the nature of the act he was doing. He would make a promise with that light-heartedness and carelessness which is the spirit of the maxim "Promises like pie-crusts are only made to be broken." On this account, therefore, the law laid down a distinction between a promise which had been accompanied by all the solemn formalities of signing and sealing, and one which had not been so accompanied. It considered that a man would not have executed a deed unless he had duly weighed the consequences of his doing so, and that he would not have affixed his seal to a written promise, unless he were moved to do so by the fact that he derived some advantage thereby; and it would not, under such circumstances, look into the matter to see whether he *had* derived any such benefit. But in the case of a simple agreement, where there were no attendant formalities, the law knowing what a great weakness men have for making promises out of pure good-nature and light-heartedness, without any serious idea of binding themselves by them, would look into the matter to ascertain whether the person to whom the promise was made had obtained it by the conferring of any benefit on the promisor, or on a third party by the act of the promisee, or had put himself under any inconvenience which resulted in the making of the promise. If this were not so, then it considered that the promise was a mere *nudum pactum*, and that the promisor, however much he might be bound by moral laws to fulfil his agreement, could not legally be compelled to do so.

This was all very well in those ancient days of which we are speaking; but to-day, when the execution of a deed is robbed of all its solemnity, and no man thinks any more of it than of signing his name merely to an agreement, there does not any longer seem to exist sufficient reason why this distinction should be kept up. Yet the distinction does still exist, and it is as true to-day as it was centuries ago, that a deed imports a consideration, but a mere promise not under seal will not be actionable unless it is supported by a valuable consideration, moving from the promisee to the promisor.

We have been led to make the preceding remarks, as a result of a perusal of the recent case of *Foakes* v. *Beer* (L. R., 9 App. Cas. 605), for the decision in this case would have been different if the agreement upon which that action was brought had been under seal. On this case we propose to make a few observations, as it will serve to remind the reader that the doctrine laid down in the old case of *Cumber* v. *Wane* (1 Str. 426) is still in force, and that when a debt is owing, the payment of a less sum than the amount actually due will not operate as a satisfaction of the whole debt.

As an actual fact the case of *Cumber* v. *Wane* is not an illustration of the principle itself, but of a series of exceptions which have been laid down to the principle. The principle is really a *dictum* which is to be found in a former case (*Pinnell's Case*, 5 Rep. 117), and which was adopted by Sir Edward Coke (Co. Litt. 212 b.) But it was so recognized in *Cumber* v. *Wane*, and in other subsequent cases, that it has at length become an established principle of our common law.

The doctrine as stated in *Pinnell's Case* is "that payment of a lesser sum on the day in satisfaction of a greater, cannot be any satisfaction for the whole, because it appears to the judges, that by no possibility can a lesser sum be a satisfaction to the plaintiff for a greater sum." "But," the judgment in that case continues, "the gift of a horse, hawk or robe, &c. in satisfaction is good, for it shall be intended that a horse, &c. might be more beneficial to the plaintiff than the money, in respect of some circumstance, or otherwise the plaintiff would not have accepted of it in satisfaction. But when the whole sum is due, by no intendment the acceptance of parcel can be a satisfaction to the plaintiff; but in the case at bar, it was resolved that the payment and acceptance of parcel before the day in acceptance of the whole would be a good satisfaction in regard of circumstance of time; for peradventure parcel of it before the day would be more beneficial to him than the whole at the day, and the value of the satisfaction is not material; so if I am bound in 20*l.* to pay you 10*l.* at Westminster, and you request me to pay you 5*l.* at the day at York, and you will accept it in full satisfaction for the whole 10*l.*, it is a good satisfaction for the whole; for the ex-

penses to pay it at York is sufficient satisfaction."

The reason, you will see, on which the principle is founded is, that on payment of part of a debt, the whole of which is due, an agreement to accept that part in satisfaction of the whole is one which is not supported by any consideration; it is a *nudum pactum*. No benefit arises to the creditor by his accepting part of the debt: there is no consideration moving from the debtor to constitute a consideration for the relinquishment of the residue, and the law is, that there must be some such consideration, "something collateral to show the possibility of benefit to the party relinquishing his further claim, otherwise the agreement is a *nudum pactum*. (See *Fitch* v. *Sutton*, 5 East, 230.)

This doctrine, as stated in *Pinnell's Case*, remains to the present day nothing more than a mere dictum. There has been no case precisely in point, and it has become law, not by being confirmed, but merely because it has not been contradicted. (See Earl of Selborne's judgment in *Foakes* v. *Beer*, at p. 612.) It has, however, been accepted as part of the law of England for 280 years, and though it has been repeatedly criticized as questionable in principle, it has never been judicially overruled, and the House of Lords, in *Foakes* v. *Beer*, thought that it was on that account deserving to be treated with respect, and that they would not do right to reverse it as erroneous. The Lord Chancellor there observed, "If the question be, (as in the actual state of the law, I think it is), whether consideration is, or is not, given in a case of this kind by a debtor who pays down a part of the debt presently due from him for a promise by the creditor to relinquish, after certain further payments on account, the residue of the debt, I cannot say I think consideration is given in the sense in which I have always understood that word as used in our law. It might be (and indeed I think it would be), an improvement in our law, if a release or acquittance of the whole debt on payment of any sum which the creditor might be content to accept by way of accord and satisfaction (though less than the whole), were held to be generally binding, though not under seal; nor should I be unwilling to see equal force given to a prospective agreement like the present in writing though not under seal; but I think it impossible without refinements which practically alter the sense of the word to treat such a release or acquittance as supported by any new consideration proceeding from the debtor."

The case of *Fitch* v. *Sutton* seems at first sight to be a good illustration of the doctrine. There A. owed B. 50*l*., and on the latter's compounding with his creditors, (not under the Bankruptcy Acts, however), paid him 7*s*. in the £ (amounting to 17*l*. 10*s*.), and promised to pay him the residue when he could. B. sued him for the balance, and though A. produced a receipt for the 17*l*. 10*s*. purporting to be in full of all demands, it was held that this could not be a satisfaction of the debt, as there was no consideration for the relinquishment of the residue, A.'s promise to pay the rest when he could not being such a consideration, because it put the creditor in no better position than he was in before. But this case does not afford an exact illustration of the doctrine, because "not only did the plaintiff not accept the payment of the dividend in satisfaction, but he refused to accept it at all, unless the defendant agreed to promise to pay him the balance when of ability, and the defendant assented and made the promise required; so that, but for the fact that there were other creditors parties to the composition, there could have been no defence. . . whether the dictum in *Pinnell's Case* was right or wrong." (*Foakes* v. *Beer*, Lord Blackburn, at p. 621.) Lord Blackburn thought that Coke's statement of the doctrine is now settled law, though he thought the latter had made a mistake in fact. "For it is," he says, "my conviction that all men of business, whether merchants or tradesmen, do every day recognize and act on the ground that prompt payment of part of their demand may be more beneficial to them than it would be to insist on their rights and enforce payment of the whole. Even where the debtor is perfectly solvent and sure to pay at last, this is often so. Where the credit of the debtor is doubtful it must be more so. I had persuaded myself that there was no such long-continued action on this dictum as to render it improper for this House to reconsider the question." But in result the learned Lord did not persist in his views hostile to the doctrine, and assented to it. Dissatisfaction with the doctrine was also expressed by Lord Fitzgerald, who said: "It would have been wiser and better if the resolution in *Pinnell's Case* had never been come to, and there had been no occasion for the long list of decisions supporting composition with a creditor on the rather artificial consideration of the mutual consent of other creditors. We find the law to have been accepted as stated for a great length of time, and I apprehend that

it is not now within our province to overturn it."

Perhaps *Foakes* v. *Beer* comes nearer illustrating the rule than any other case which has yet been decided on the subject. Here F. owed B., and B. obtained a judgment for, the sum of 2,090*l.* 19*s.* A written agreement was then entered into between them, that in consideration of F. paying down part of the debt, and on condition of his paying the residue by instalments, B. would not take any proceedings under the judgment. But B. subsequently took out a summons for leave to proceed under the judgment and sought to enforce payment of interest upon it. It was held by the House of Lords (affirming the decision of the Court of Appeal, which had reversed that of the Queen's Bench Division), that the agreement was a *nudum pactum* and without consideration, and that B. could therefore proceed to enforce payment of interest under the judgment. The law was treated as settled that the payment of part of a debt then due and payable cannot alone be a foundation of a parol satisfaction and discharge of the residue, as it brings no advantage to the creditor, and there is no consideration moving from the debtor, who has done no more than partially to fulfil his obligation.

The doctrine, you must remember, will only be applicable when there is no consideration to the plaintiff for the relinquishment of the remainder of his claim; and you must bear in mind that a valuable consideration in law may consist of any benefit to the party promising, or to a third person by the act of the promisee, or loss or inconvenience to the promisee, however small the benefit or inconvenience may be. So that where these exist a promise founded on them will not be a *nudum pactum* and will be supported; nor will a Court go into the question of the adequacy or otherwise of such a consideration. Relying on this point there have been distinctions drawn in many cases. Thus the payment of part of a debt before the day fixed for payment, or in some manner which inflicts an inconvenience on the debtor, or operates more beneficially to the creditor, will sometimes amount to sufficient consideration to support the relinquishment of the remainder. And if the plaintiff's claim is an unliquidated one, the defendant might successfully plead the receipt by the plaintiff of a smaller sum than the sum originally claimed in satisfaction. (See *Wilkinson* v. *Byers*, 1 A. & E. 106.) For the benefit which the plaintiff derives from having an uncertain amount (which might indeed turn out to be less than the sum actually paid) made certain, is a sufficient consideration. Again, in *Sibree* v. *Tripp* (15 M. & W. 23), it was held that a negotiable security may operate, if so given and taken, as a satisfaction of a debt of greater amount, as the negotiability of the note confers a greater benefit on the creditor than the mere payment in cash would, and this benefit is a sufficiently valuable consideration to support a promise to remit the remainder of the debt. *Cumber* v. *Wane* was rather severely handled, and the Court said, "The reasoning of Pratt, C. J., is certainly not correct, for we cannot inquire into the reasonableness of the satisfaction. But there it did not appear that the note was negotiable." And on the ground that the note in *Sibree* v. *Tripp* was negotiable, the Court held that the case did not come within the rule. It is perhaps not very evident in what respects a note for 100*l.* is more beneficial to a person than cash paid down; but the case of *Sibree* v. *Tripp* is now firmly established, and was followed in the recent case of *Goddard* v. *O'Brien* (46 L. T. Rep. 306). There A. owed B. 125*l.* and B. agreed to accept, and gave a receipt for, a cheque for 100*l.* in settlement of the account. It was held that the cheque was a negotiable instrument, and that therefore the doctrine of *Cumber* v. *Wane* did not apply. That case was again very severely commented on, and Grove, J., gave it but faint praise when he said, "It was entitled to every respect, though we may not see the reason on which the doctrine there laid down was founded."

The doctrine, then, is that the payment in cash of a less sum will not prevent the creditor from suing for the balance, even though he has expressly received the less sum in satisfaction of the whole demand, and has made an agreement not to seek to enforce his claim for the balance. But if the payment of the lesser sum has been by note, cheque or other negotiable security, or is otherwise more beneficial to the creditor than a mere payment in cash, then the payment will operate as satisfaction. Of course if the receipt be given under seal, this will presume a consideration, and in that case the payment of a less amount will be a satisfaction of the whole claim.

BANKRUPTCY.

By Robt. McLean, Esq., Solicitor.

XIV.

Discharge of Debtor.

It must not be supposed that the bankrupt need wait until his estate is realized and divided up before he can obtain his discharge. Indeed, in practice, he usually obtains it long before that time. Under the Act of 1869, he could obtain it at any time after the close of the bankruptcy (*i. e.*, the realization of his property), or at any time during its continuance with the assent of his creditors. Under the present Act he may *apply* for his discharge at any time after being adjudged bankrupt; but the Court will not hear his application till after he has passed his public examination, and the application will be heard in open Court. (Sect. 28, sub-sect. 1.) And Rule 178 requires him, on applying for his discharge, to produce to the registrar a certificate from the official receiver specifying the number of his creditors, and to give twenty-eight days' notice of the time and place appointed for hearing the application to the trustee and official receiver, and the latter is to send copies of the notice to the Board of Trade for insertion in the "Gazette," and to each creditor who has proved, fourteen days before that day. On the hearing of the application, the Court will consider a report of the receiver (which, for this purpose, is *primâ facie* evidence of the statements contained therein) as to the bankrupt's conduct and affairs; and, acting on this report, it may—

1. Grant the discharge.
2. Refuse it.
3. Grant an order of discharge, but suspend its operation for a specified time.
4. Grant the discharge subject to conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property.

The statute provides that the order must be refused when the bankrupt has committed anything made a misdemeanor under the Act (vide sect. 31), or under Part II. of the Debtors Act, 1869, or any amendment thereof; and gives the Court a discretion to refuse the order or suspend its operation, or make a conditional order, on proof of the following facts, *i. e.*, that the bankrupt

(a) Has omitted to keep usual and proper books of account which will sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

(b) Has continued to trade after knowing himself to be insolvent.

(c) Has contracted any provable debt without any reasonable or probable ground of expectation of being able to pay it.

(d) Has brought on his bankruptcy by rash and hazardous speculations, or unjustifiable extravagance in living.

(e) Has put any of his creditors to unnecessary expense by frivolous or vexatious defence to any action properly brought against him.

(f) Has within three months preceding the receiving order unduly preferred any creditor.

(g) Has been adjudged bankrupt, or made a statutory composition or arrangement with his creditors, on some previous occasion.

(h) Has been guilty of fraud or fraudulent breach of trust. (Sect. 28, sub-sect. 3.)

It will be seen at once how much greater difficulty a bankrupt will now experience in getting his discharge than he did under the Act of 1869. Under that Act, if he paid 10*s.* in the pound, and had made no default in giving up his property to his creditors, and no prosecution had been commenced against him under the Debtors Act, 1869, he got his discharge as a matter of course; and by getting a special resolution of his creditors to the effect that in their opinion his failure to pay 10*s.* in the pound was not his fault, he could obtain a discharge, even though he paid less than 10*s.* in the pound; and if he obtained such a resolution the Court would not question the accuracy of the facts which it was grounded on (*Ex parte Hamilton*, *Re Hamilton*, L. R., 9 Ch. D. 694). But a debtor whose affairs were liquidated by arrangement had far greater ease in obtaining his discharge: all he had to do was to get a special resolution of his creditors granting his discharge, and the Court had no hand in the matter. Now, however, the uprightness or otherwise of a bankrupt's business career will be taken into account in granting his discharge; and if the provisions of sect. 28 are only administered strictly, it may be hoped that they will do something to making commercial morality a little more perfect.

On the hearing of the application for discharge the Court may question the debtor and receive such evidence as it may think fit. (Sect. 28, sub-sect. 5.) And it may, as one of the conditions of a conditional discharge, require the bankrupt to consent

to judgment being entered against him by the official receiver or trustee for any balance of the debts proveable not satisfied at the date of his discharge. (Sect. 28, sub-sect. 6.) This is a new provision. Its object will be perceived when it is noted that the new Act does not repeat the provisions of the Act of 1869, that the debts of a debtor undischarged for three years after the close of the bankruptcy became judgment debts, and were enforceable against his property with the sanction of the Court. An unconditional discharge of the bankrupt would, as to nearly all the debts proveable under his bankruptcy, free from them any property which he might acquire subsequent to his discharge; but if he is required to consent to judgment being entered against him as mentioned in this sub-sect. 6, a hold will be retained on such future property which will render it easily available for the unpaid balance of his debts. Where such a judgment is entered up execution cannot be issued on it without the leave of the Court, and this leave may be granted on proof that the bankrupt has since his discharge acquired property or income available for payment of his debts. Application for leave to issue such execution must be in writing stating the grounds thereof, and eight days' notice of the day fixed for hearing, together with a copy of the application, must be given to the debtor. (Rule 181.) A bankrupt discharged subject to such a condition that judgment shall be entered up against him, or subject to any other condition as to his after-acquired property, must, when required, give the receiver information as to any future-acquired property, and further, must once a year at least file in Court a statement showing the particulars of any property or income he may have acquired subsequently to his discharge. (Rule 182.)

As to orders of discharge generally, Rule 179 provides that the order shall be dated on and take effect from the day it is made, but shall not be delivered out or gazetted till after the expiration of the time allowed for an appeal against it, or, if an appeal is entered, till after the decision of the Court of Appeal. It is the registrar's duty to send notice of the order, when delivered out, to the Board of Trade to be gazetted. (Rule 180.) The appeal must be brought within twenty-one days after the making of the order. (Rule 112.)

What, then, is the position of a bankrupt who has obtained his discharge? In the first place, he must still aid the trustee in the realization and distribution of such of his property as is vested in the trustee, and, if he fail to do so, not only will he be guilty of contempt of Court, but the Court has power to revoke the discharge; provision, however, is made that such a revocation shall not prejudice the validity of any sale, disposition or payment duly made or thing duly done between the discharge and the revocation. (Sect. 28, sub-sect. 7.) This is a new provision: under the Act of 1869 the discharge could only be revoked on the ground that it had been obtained by fraud. (Sect. 53.) The new Act does not make the discharge revocable on the ground of fraud, for as a thorough examination is made into the debtor's conduct before the discharge is granted by the Court, the presumption is that no fraud on the debtor's part will have any influence in causing the Court to grant it.

As to the effect of the order of discharge on the debtor's liability for debts proveable in bankruptcy, sect. 30 of the new Act makes some important alterations in the law as it stood under the Act of 1869. We set out sect. 30 in full. It provides—

(1) An order of discharge shall not release the bankrupt from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

(4) An order of discharge shall not release any

person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Sub-section 1. The debts from which the discharge does not release the debtor are now—

(a) Debts on recognizances;

(b) Debts at the suit of the Crown, or of any person, for offences against public revenue statutes;

(c) Debts due on bail bonds to a sheriff or other public officer;

unless in respect of such debts he has obtained a certificate of the Treasury consenting to his discharge from them:

(d) Debts incurred by fraud or fraudulent breach of trust to which he was a party;

(e) Debts the forbearance of which he has obtained by fraud.

Under the Act of 1869 (sect. 49) the discharge did not free the debtor from the debts mentioned under heads (b), (c), (d) and (e); but, instead of "debts on recognizances," it read "debts due to the Crown."

Sub-sections 2, 3 and 4 are substantially re-enactments of sects. 49 and 50 of the Act of 1869.

But this Act does not repeat sect. 54 of the Act of 1869. This section, it will be remembered, provided that no debt provable under the bankruptcy be enforced against the bankrupt until the expiration of three years from the close of the bankruptcy; and during that time, if he paid his creditors such additional sum as, with the dividend paid during the bankruptcy, would make up ten shillings in the pound, he shall be entitled to his discharge: and that at the expiration of the three years, if the bankrupt had not obtained his discharge, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) should be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his bankruptcy, might be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor a bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only, and at the time and in manner directed by such Court, and after giving such notice and doing such acts as might be prescribed in that behalf.

Now under that Act the debtor was entitled as against the trustee to any property he might acquire subsequent to his discharge, although the bankruptcy had not been closed, or subsequent to the close of the bankruptcy, although he had not obtained his discharge. (*Ebbs* v. *Boulnois*, L. R., 10 Ch. 479, and *Re Pettitt*, L. R., 1 Ch. D. 478.) The present Act says nothing about the close of the bankruptcy, but all property acquired by the bankrupt prior to his discharge passes to the trustee, and all property acquired after the discharge belongs to the bankrupt. (Sect. 44.) Under the old Act no action for a proveable debt could be brought for three years after the close of the bankruptcy, whereas under the present Act it would seem that an action can be brought as soon as he has obtained his discharge, with the leave of the Court, and subject to the power of the Court to restrain any action under sects. 9 and 10.

Section 31 of the new Act renders the position of an undischarged bankrupt more humiliating than it was under the Act of 1869 by providing that when he obtains credit to the extent of 20*l.* or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanor, and may be dealt with and punished as if he had been guilty of a misdemeanor under the Debtors Act, 1869.

With the payment of a final dividend, the discharge of the debtor and the release of the trustee, the general history of an ordinary bankruptcy closes. There are still, however, several points under the Act of 1883 which are worthy of attention. First, we will consider briefly the provisions made for

The Punishment of Fraudulent Debtors.

The Court may take measures for the prevention of fraud as well as for the punishment of it. Sect. 25 repeats sect. 85 of the Act of 1869, and makes provisions for the arrest of a debtor when

(a) After the issue of a bankruptcy notice or presentation of a petition against him there is reason he is about to abscond to avoid payment of his debts, or to avoid service of a petition or appearance to it, or examination as to his affairs, or that he intends otherwise avoiding, delaying or embarrassing the proceedings.

(b) After petition there is reason to believe that he is about to remove his goods to prevent or delay the receiver taking possession of them, or that he has concealed or is about to conceal or destroy any of his property, &c., which might

be of use to his creditors in the course of his bankruptcy.

(c) After petition served, or receiving order, he removes any goods in his possession above the value of 5*l.* without leave of the receiver or trustee.

(d) If he fails, without good cause, to attend any examination ordered by the Court.

The provisions for the punishment of fraudulent debtors contained in the Debtors Act, 1869, sects. 11 and 12, are incorporated by sect. 163 of the new Bankruptcy Act, and are now made applicable to traders and non-traders alike. For these provisions the reader must refer to the Debtors Act itself. It is sufficient here to remark that they make certain offences by bankrupts misdemeanors, punishable with imprisonment for two years, with or without hard labour. Leave to prosecute in such cases should be applied for by the receiver or trustee (B. A. 1883, sect. 164; Debtors Act, 1869, s. 16); and the Court has power to commit the debtor for trial and bind over witnesses to appear, &c. (Sect. 165.)

If a prosecution is ordered, the Director of Public Prosecutions is to institute and carry on the prosecution. (Sect. 166.) This will be a great benefit to the creditors and the public generally. The creditors will not now have to bear the costs of prosecution, and the frauds of bankrupts are more likely to meet with their deserved punishment.

(*To be continued.*)

BANKRUPTCY RULES, MARCH, 1885.

1. A proxy given by a firm or person carrying on business is sufficiently executed if filled up and signed by any person in the employ of such firm or person having a general authority (procuration) to sign for such firm or person.

This will form Rule 183 (4). Before this rule the proxy had to be signed by the creditor himself, or if the creditor was a firm by a member of the firm. See Form 56.

2. For Rule 265 of the Bankruptcy Rules, 1883, which is repealed, is substituted the following rule, to form Rule 265*a*:—

Unless and until the Lord Chancellor otherwise orders, the jurisdiction and powers of the High Court under section 5 of the Debtors Act, 1869, shall be exercised by the judge to whom the bankruptcy business is assigned, and shall no longer be exercised by the bankruptcy registrars of the High Court.

The repealed rule (265) provided that this jurisdiction should be exercised by the bankruptcy registrars of the High Court. Judgment summonses will now be heard by Mr. Justice Cave or by a County Court judge, but by the next rule the creditor will have to resort to the County Court, unless he obtains leave to issue the summons in the High Court. This rule, which is to form Rule 265*b*, provides:—

3. No summonses under section 5 of the Debtors Act, 1869, shall be issued by the High Court, unless the judgment creditor shall first apply for and obtain an order of the judge exercising the jurisdiction of the High Court under the said section for the issue of such summons.

4. By a rule to form Rule 269*a*, Rule 269 is repealed. The repealed rule prevented inferior Courts within the London Bankruptcy District exercising jurisdiction under sect. 5 of the Debtors Act, 1869, in respect of any judgment of the High Court.

In future, therefore, under the provisions of the Bankruptcy Act, 1883 (sect. 103), and the Bankruptcy Rules, judgment summons must be issued from the County Court whether the judgment is one of the High Court or County Court, and not from the High Court, unless leave is obtained from the judge exercising jurisdiction in bankruptcy; and if leave is obtained the summons will be heard by that judge, and not by one of the registrars.

5. For Rule 268 (1), which is repealed, is substituted the following rule, to form Rule 268 (1) (a).

Where an application to commit is made to the judge of a Court not having bankruptcy jurisdiction, and he is of opinion that a receiving order should be made in lieu of committal, he may order the matter to be transferred to the Court to which, under the provisions of the Act and Rules, a bankruptcy petition against the debtor in relation to the amount of the judgment debt would at the date of the transfer be properly presented.

Under the repealed rule the transfer might be ordered to the "nearest or most convenient Court having jurisdiction in bankruptcy."

6. To meet the case of a receiving order being made by a Court of bankruptcy to which the petition could not be properly presented, the following rule, to form Rule 268 (b), is enacted:—

(1.) Where under section 103 of the Act a

receiving order is made by a Court to which a bankruptcy petition against the debtor could not properly be presented, the Court making the order shall by the order transfer the matter to the Court to which a bankruptcy petition against the debtor would properly be presented, and thereupon the official receiver of such latter Court shall be constituted the official receiver of the debtor's estate, and all proceedings shall be taken as if the receiving order had been made by such latter Court.

(2.) Where any such order of transfer is made the registrar of the Court making the transfer shall forthwith transmit by post to the registrar of the Court to which the matter is transferred the proceedings in the matter, together with a sealed copy of the order of transfer; and the registrar of the latter Court shall forthwith give notice of the transfer to the official receiver and the Board of Trade.

To give full effect to the above rules, by an Order dated 4th March, 1885, under the hand of the Lord Chancellor, it is provided that from and after 4th April, 1885, so much of the order made by the Lord Chancellor, and dated 1st January, 1884, as relates to the jurisdiction of the judges of the High Court, under sect. 5 of the Debtors Act, 1869, being delegated to the London Registrars in Bankruptcy, is rescinded; the said Order being as from the said 5th April read and construed as if the words commencing "and do further order" down to the conclusion of the Order, were omitted therefrom.

BANKRUPTCY ACT, 1883.

Regulations for the Conduct of Business in Bankruptcy in the High Courts.

1. Regulation 2 of the Order of January 1st, 1884, is to be read as if clauses (C.), (D.) and (E.) were omitted therefrom.

2. All matters and applications in bankruptcy which, by the Act or the Rules, or the general or special directions of the judge, are to be heard before him, except matters and applications adjourned by a registrar to be heard by the judge in chambers, are to be heard in open Court, unless otherwise ordered.

3. All matters and applications for hearing before the judge in open Court, except *ex parte* motions, must be set down in a list to be kept at the office of the senior bankruptcy registrar, and will be heard in the order in which they are set down in such list, except in cases of emergency, or for any other sufficient cause.

4. *Ex parte* motions will be heard immediately on the sitting of the Court, before all other matters and applications, and in case of emergency may, by leave of the judge, be made at any time during the day.

5. The hearing of applications for the committal of any person to prison, the hearing of objections by the Board of Trade to the appointment of a trustee, and the hearing of matters and applications adjourned by a registrar to be heard before the judge in open Court, will take place on such Monday during the sittings as the registrar may appoint, or so soon thereafter as the matter or application can be heard.

6. Every notice of motion to be heard before the judge must name some Monday during the sittings for hearing the motion, and such motion will be heard on the Monday so named, or so soon thereafter as the motion can be heard.

7. All applications, matters and summonses for hearing before the judge in chambers must be set down not later than 4 o'clock on the previous Friday in a list to be kept at the office of the senior bankruptcy registrar, and will be heard in the order in which they are set down in such list.

8. Applications for leave to issue a summons under sect. 5 of the Debtors Act, 1869, may be made *ex parte*, and without any affidavit. The applicant will have to produce a printed form of application for a summons properly filled up, which, if leave to issue the summons is given, will be indorsed by the judge.

9. When it is intended to apply to the judge for the costs of short-hand notes of the hearing of any motion or appeal, the application should be made in Court before the notes are taken. In the absence of special circumstances, an application for the costs of such notes will not be entertained if not made until after the notes have been taken.

10. An application for the judge's notes of the evidence given upon a motion before him for use in the Court of Appeal may be made at any time after the hearing; such application will have to be in writing, and must have the appropriate stamp affixed to it, and thereupon the notes will be transmitted by the Judge to the Court of Appeal. After such written application has been made either party may obtain a copy of the notes for the use

of his counsel on application to the judge's clerk, and on payment of a fee of 6*d.* per folio.

11. A Divisional Court will sit at the Royal Courts of Justice on every Tuesday during the sittings of the High Court, unless notice to the contrary is given.

12. The judge will sit in open court on every Monday during the sittings of the High Court, unless notice to the contrary is given.

13. The judge will sit in chambers at 4 o'clock in the afternoon of every Monday during the sittings of the High Court (unless notice to the contrary is given) for the purpose of hearing matters and applications adjourned by the registrar to be heard before the judge in chambers, and also for the purpose of hearing summonses under sect. 5 of the Debtors Act, 1869, and applications for leave to issue such summonses.

These regulations are substituted for the regulations of the 7th of January, 1884, and came into operation on the 4th of April last.

REGULATIONS UNDER THE PUBLIC PROSECUTION ACTS, 1879 AND 1884.

The Rules under these Acts have now been issued. It is provided that—

(1.) The cases in which it shall be the duty of the Director of Public Prosecutions to institute a criminal proceeding in respect of an offence are the following:—(a) where the offence is punishable with death; (b) where the offence is of a class the prosecution of which has been undertaken by the Solicitor of the Treasury; (c) where an order in that behalf is given to the Director by the Secretary of State or the Attorney-General; and (d) where it appears to the Director that the offence, or the circumstances of its commission, is or are of such a character that a prosecution in respect thereof is required in the public interest, and that owing to the importance or difficulty of the case, or to other circumstances, the action of the Director of Public Prosecutions is necessary to secure the due prosecution of the offender.

(2.) The proceedings to be instituted in any of the above cases shall be such as the Director of Public Prosecutions considers to be necessary to secure the prosecution of the offender.

(3.) It shall be the duty of the Director of Public Prosecutions, either on application or on his own initiative, to give in any case which appears to him to be of importance advice to clerks of justices of the peace and to chief officers of the police, and to such other persons as he may think right, and such advice may, at the discretion of the Director, be given verbally or in writing.

(4.) Where it is brought to the notice of the Director of Public Prosecutions that a case has been reserved for the opinion of the High Court of Justice under the Act of , and that counsel has not been instructed for the prosecution, he shall, if he thinks the case of sufficient importance, or is so directed by the Attorney-General, instruct counsel to appear for the prosecution.

(5.) The Director of Public Prosecutions may assist prosecutors by authorizing them to incur special costs for the purpose of—(a) the preparation of scientific evidence; (b) the remuneration of scientific witnesses; (c) the payment of extra fees to counsel; (d) the preparation of plans or models; and for any special purpose which the Attorney-General may sanction.

The Director of Public Prosecutions may also sanction the payment of any special costs incurred for any of the said purposes in any criminal proceeding if he is satisfied that the incurring of costs for that purpose was requisite for the proper conduct of the proceeding, and that some emergency or other good reason rendered it necessary to incur such costs without his previous authority.

(6.) It shall be the duty of the Director of Public Prosecutions to cause the chief officer of every police district to send to such Director the information required by the Regulations under the Prosecution of Offences Acts, 1879 and 1884.

(7.) Where the Director of Public Prosecutions institutes or undertakes or carries on any criminal proceeding, it shall be his duty to give the notice for obtaining the documents which justices of the peace or coroners are required by that sanction to transmit to the Director; and the Director of Public Prosecutions shall cause every such document and thing to be delivered or sent by post in a registered letter to the proper officer of the Court in which the trial is to be had a reasonable time before such trial.

(8.) Where it is brought to the knowledge of the Director of Public Prosecutions that a prosecution for an offence instituted before any justice or police court is withdrawn, or is not proceeded with within a reasonable time, it shall be his duty to institute a prosecution, to obtain from the clerk to such justice or police court the documents, &c. necessary.

(9.) The Director of Public Prosecutions may

employ any solicitor to act as his agent in the conduct of a prosecution, and, after examination of the costs and charges of such agent, shall certify the amount which he finds to be reasonable to be paid.

(10.) The action of the Director of Public Prosecutions shall in all matters, including the selection and instruction of counsel, be subject to the directions of the Attorney-General.

AT WHAT TIME DOES THE PROPERTY PASS ON THE SALE OF GOODS?

In the following remarks we are concerned with the question not Does any property in the goods sold pass at all? but with the question, When does the property pass? The two questions are distinct, and it is taken for granted, in all our subsequent observations, that the vendor has full power to pass the property.

When goods are bought and paid for and handed over to the buyer, there will of course arise no question as to whether the property in them has passed. But transactions are not always of this simple nature. The buyer may not take away the goods. He may choose not to do so, but to have them delivered to him at some specified place by the seller. He may reside at too great a distance for them to be delivered to him except after a considerable lapse of time, during which the goods are liable to be destroyed; or he may not be able to take them away either on account of their bulk, or because they are not as yet in a state for delivery, or not yet completed, or even not *in esse*. It is in such cases mainly that the question, Has the property in the goods passed from the seller to the buyer? arises, and the circumstances under which it does arise are generally when the goods are destroyed by fire or other cause, or when the vendor becomes bankrupt before they have reached the purchaser's hands.

We propose, then, to devote a few lines of our columns to answering the question which we have put at the head of our paper. For the purpose of this inquiry it will be convenient to divide the sale of goods into two classes—the sale of specific goods, and the sale of goods not specific; the former class comprising the sale of some chattel definitely identified by buyer and seller, and the latter, the sale of goods not specifically identified, but of articles to be manufactured, or of a certain quantity of goods in general.

I. As to the sale of specific goods.

With regard to this, we may lay down the following rules:—

(a) The sale of a specific chattel will pass the property in it to the purchaser, even before the delivery thereof to the purchaser;

(b) The property will so pass whether or not anything is done or said as to the price.

For rule (a) the case of *Dixon* v. *Yates* (5 B. & A. 313) furnishes a good authority. Here it was said that the sale of a specific chattel would pass the property in it to the purchaser without delivery. Where by the contract itself the vendor appropriates to the vendee a specific chattel, and the latter thereby agrees to take that specific chattel and to pay the stipulated price, the property is in the same situation as it would be after the delivery of goods in pursuance of a general contract. The vendor's appropriation of the chattel is equivalent to delivery by him, and the assent of the vendee to the specific chattel and to pay the price is equivalent to the acceptance of possession. The effect of the contract, therefore, is to vest the property in the bargainee.

For rule (b), *E. Simmons* v. *Smith* (5 A. & E. 313) may be cited as an authority. Here it was said that where a bargain and sale is made for the purchase of goods and nothing is said about payment or delivery, the property nevertheless passes immediately so as to cast on the purchaser all future risk, if nothing remains to be done to the goods; though he cannot take them away without paying the price. And even where the price is mentioned, but credit is to be given and that credit limited to a definite period, the property will pass at once. Nor will default in payment divest the property in the goods from the purchaser. The contract gives the vendor a right of action for the price and a lien on the goods if they remain in his possession after the period of credit expires (*Martindale* v. *Smith*, L. R., 1 Q. B. 395).

A good illustration of these rules is afforded by the case of *Tarling* v. *Baxter* (6 B. & C. 360). Here B. on January 4th agreed to sell T. a stack of hay for 14*l.*, payable on the 4th of February, the hay to remain on B.'s premises till May 1st, and not to be cut till paid for. The hay was destroyed by fire and it was held that the loss fell on T., as the property in it passed as soon as the contract was made. (See also *Sweeting* v. *Turner*, L. R., 7 Q. B. 310; and *Gilmour* v. *Supple*, 11 Moo. P. C. 566.)

The above rules, however, like most other rules,

have their exceptions, and will not prevail where they are against the intention of the parties as deducible from the transaction. The exceptions may be collected under the following heads:—

(1) Where the vendor is to do anything to the goods to put them into that state in which the vendee is bound to accept them.

(2) Where anything remains to be done for the purpose of ascertaining the price, *e. g.*, weighing, measuring, or testing the goods.

(3) Where the buyer is bound to do anything as a condition on which the passing of the property depends.

Exception (1). In illustration of this exception we may quote the case of *Acraman* v. *Morrice* (8 C. B. 449). Here there was a contract to sell timber. The buyer was to show the trees he wished to take, and the seller engaged to sever the tops and sidings, and to convey the trunks to the buyer. It was held that the property did not pass till the tops, &c., were severed. For further illustration of this exception, the reader may refer to the cases of *Rung* v. *Minnett* (11 East, 210), and *Tansley* v. *Turner* (2 Scott, 238). Again, the property in a specific chattel will not pass if it is in an incomplete or not in a deliverable state, as where it is a partly-built carriage or ship, unless there is some evidence to show that the parties intended that the property should pass at once, notwithstanding such incomplete state. The case of *Woods* v. *Russell* (5 B. & A. 942) is an illustration of this principle. Here a ship was to be built, and the purchaser was to pay for it by instalments according to the progress of the work. During the building, it was measured in order that the buyer might register her, which he did in his own name, and he subsequently treated her as his own property by appointing a master, and advertising her for charter. It was held that these Acts showed an intention that the property in her should pass at once, the implication being that in the absence of evidence of that intention, the property would have remained in the builder. (See also *Clarke* v. *Spence*, 4 A. & E. 448; *Wood* v. *Bell*, 25 L. J., Q. B. 321.) It may be here observed, that the general rule as to ship building contracts, when the purchase-money is to be paid by instalments on dates regulated by the finishing of particular stages of the work, is that on the payment of each instalment the property in the work done and in the materials finished up to that time will pass to the purchaser. (*Clarke* v. *Spence*, *supra*.) The agreement to pay by instalments affords evidence that the parties intended that the property should pass by degrees, notwithstanding the general rules that property in a chattel which is to be delivered *in futuro* does not pass till it is finished. But the rule in *Clarke* v. *Spence* only applies to contracts to build a ship or make a chattel, and not to cases of a mere contract to repair. Here, though there is an agreement to pay for the repairs by instalments regulated by the progress of the repairs, the property in the work accomplished will not pass by payment of the instalments, and not until the whole work is completed. For such a contract is in substance not one for the sale of the new materials added but one for work and labour, and there cannot be deduced therefrom an intention (as there was in *Clarke* v. *Spence*) that the work is to be paid for or pass till the whole is completed. A contract to repair is naturally a whole indivisible contract to complete the repairs, and is not executed till the repairs are done. (*Anglo-Egyptian Co.* v. *Rennie*, L. R., 10 C. P. 271.) Thus again, where there is a contract to build a ship the property in the articles purchased for the ship will not pass until they have been fitted and form part of the ship. (*Wood* v. *Bell*, *supra*.)

Where the contract is for work and labour in addition to the supply of material, no property in the materials passes until the labour is completed (*Tripp* v. *Armitage*, 4 M. & W. 687.) Thus on a contract to make and fix window frames, no property passes in the frames till they are fixed; and again, in another case, there was a contract to make and fix certain machinery on the premises of M., and pending the construction thereof the premises were destroyed by accidental fire. A. brought an action against M. for work and materials supplied. It was held that the property had not passed from A., for when a man contracts to do an entire work for a specific sum, he cannot recover unless the work be done, and whatever by the contract is a condition precedent of the right to payment being earned, is presumably also a condition precedent for the passing of the property. (*Appleby* v. *Myers*, L. R., 2 C. P. 651.)

There is a seeming exception to the above exception which is laid down in *Castle* v. *Playford* (L. R., 7 Ex. 98), and is there stated to be, that where property is to be paid for on delivery, and where the risk of delivery is assumed by the purchaser, if the destruction of the property prevents

delivery, payment therefore is nevertheless due, and the question whether the property has passed or not need not be gone into. Thus in *Martineau* v. *Kitching* (7 Q. B. 436), goods were sold "prompt at one month," "goods at seller's risk for two months." The goods were to be marked and paid for in advance of being weighed, part money to be returned if goods not up to weight. The buyer took away a part, and the rest which were left were destroyed by fire, after the two months, but before being weighed. It was held that the purchaser must sustain the loss. The question whether the property in it had passed was not the ground taken for the decision, but the fact of his having taken the risk upon himself. Another exception to the exception is that the property will pass even though something remains to be done to the goods, if that something is to be done by the vendor, not before delivery but afterwards. So that if A. sells B. a watch and engages to keep it in good order for a certain time after the sale, the property in the watch will nevertheless pass at once to B. (See *Greaves* v. *Heppe*, 2 B. & A. 131.)

As an authority for exception (2) we refer you to the case of *Zagury* v. *Furnell* (2 Camp. 240), where certain bales of skins were sold at so much per dozen; it was the vendor's duty to count them. The bales were consumed by fire before this was done, and it was held that the loss must fall on the vendor, as the property had not passed. Again, property in a specified chattel bought in a shop, to be paid for on being sent home, will not pass to the purchaser until delivery at his house; and if the seller undertakes to deliver the property at a given place, and there is nothing to show that it is to be at the buyer's risk, in the meantime the contract is not fulfilled by the seller till delivery (*Calcutta Co.* v. *De Mattos*, 32 L. J., Q. B. 322, 355); and where there is a purchase of various articles on the same occasion and at the same time, the property in each article does not necessarily pass separately, even though a separate price is fixed for each. The question will be, was there under the circumstances an intention that there should be a contract for each article, or one entire contract for the whole lot. (*Baddley* v. *Parker*, 2 B. & C. 37.) In this case several articles, each less than 10*l.* in value, were purchased, and the purchaser asked for an account for the whole to be sent in. The price of the articles purchased amounted in all to 70*l.*, for which an account was sent in as requested. The purchaser refused to take the goods, and the question arose, whether the contract ought not to have been in writing as coming within the provisions of the 17th section of the Statute of Frauds. It was held that it should have so been, for the transaction amounted to one entire contract for the sale of goods exceeding 10*l.* in value.

We come now to the third exception. A good illustration of this is the case of *Crawcour* v. *Salter* (L. R., 18 C. D. 30). Here there was an agreement between C. and R. for the hire of certain furniture under which, if R. paid certain instalments month by month, the furniture was ultimately to become his property. It was held that until the payment of all the instalments, no property in the furniture passed to R. (See, too, *Bishop* v. *Shillito*, 2 B. & A. 319.)

In our next Number we will treat of the second division of the subject—"The Sale of Goods not Specific."

(*To be continued.*)

NOTES ON THE FINAL.

The last (Pass) Examination was held on Tuesday and Wednesday, the 21st and 22nd ult. The Honors Examination was held on Friday, the 24th ult.

Our Supplements, containing the answers to the questions, were, as usual, published immediately after the Examinations, and have been duly forwarded to our Subscribers.

The Equity Paper contained some stiff questions; but, at the same time, there were plenty of questions in which those students who had been properly taken through their work would have no difficulty in scoring good marks, and so making sure of success in passing; and, in the more difficult questions, those striving for Honors would have an opportunity of displaying knowledge, with a view to obtaining marks sufficient to bring them up to the qualifying standard for Honors. On the whole, we feel that the Equity Paper was prepared on the right basis, viz., of finding out whether the work had been thoroughly and properly done, and with a view to defeat cramming.

The Common Law Paper was probably more acceptable to candidates: the questions required shorter answers, and in many cases did not ask for reasons. But we do not ourselves think that this Paper was well framed to find out the real knowledge and work of each candidate, and so are inclined to find fault with it. The "Practice" questions were, however, rather better framed than usual. Question 25 was a teazer; and we expect a good many fell into the trap, and said

that judgment for default of appearance could be signed against B., in unhappy forgetfulness of *Jackson* v. *Litchfield* (Law Notes, Vol. I. p. 161.)

The Conveyancing Paper was easy compared with the Equity Paper, but the difference in the quality of the papers would no doubt be set right in the method of marking adopted, for if the same system of marking prevails with regard to papers requiring a totally different standard of knowledge, justice can hardly be done.

The Bankruptcy Paper would be simple enough to those who had studied the Bankruptcy Act and Rules of 1883 closely, and who had also been at pains to note up the important decisions on this Act and these rules. The marks of candidates who had simply contented themselves with getting up the Act and rules, and had not noticed the cases, would run very far short of full marks, for no less than four of the ten questions were directly taken from cases.

We notice a marked improvement in the Criminal Paper, for the questions, though hard, were not outside ones, as they have too often been at recent Examinations.

The Probate, &c. Paper was well framed; and, on the whole, we think that a very fair yet searching Examination has been held.

We regret to say that again complaints have reached us that the Examination-room was not nearly so quiet as it ought to have been. We really feel that there ought not to be the slightest ground for such a complaint; and we hope that matters will be so arranged that perfect quiet will prevail at the next Examination in June. Arrangements should be made so that no candidate is placed close to the desk to which candidates resort for explanation of questions, for fresh paper, &c., for in this neighbourhood there must necessarily be talking and noise.

We may mention that considerably more than a third of the fifty-five questions contained in the three essential subjects and bankruptcy were covered by what has appeared in the "Law Notes," and students who had closely studied our columns would have no difficulty, we should imagine, in satisfying the examiners.

That at each Examination so many questions can be answered from the "Law Notes" is not attributable to any attempt on our part to anticipate questions, but to the fact that we deal with all important legal subjects in a thorough and exhaustive way.

With regard to the Honors Examination, it is only necessary to say that it followed much the same lines as those on which previous Examinations have been conducted. If possible, the Common Law questions were more difficult than ever, and we cannot help saying that the time has arrived to cease asking questions from "Digests" or such books as Benjamin on Sales. We have no hesitation in saying that the common law questions were absurdly hard, and that no judge attached to the Queen's Bench Division could have obtained anything like full marks on the paper.

The result of the Final Pass will be announced in the entrance to the Law Society on Friday, May 8th, and the list of successful candidates will also appear in the "Times" of Saturday, May 9th.

The result of the Honors Examination may be looked for at the Law Society on Friday, May 22nd, and in the "Times" of Saturday, May 23rd.

The next Final (Pass) Examination is fixed for Tuesday and Wednesday, the 16th and 17th June, and the last day for giving notice is Monday next, May 4th. A renewed notice may, however, be given at any time not later than Monday, June 1st.

The next Honors Examination will take place on Friday, the 19th June. Notice for Honors should be given at the time of giving notice of intention of sitting for the Pass Examination. There is an extra fee of 1*l.* for Honors.

Persons wishing to be admitted must give six weeks' notice before the 1st of the month in which they wish to be admitted at the Petty Bag Office, Rolls Court, Chancery Lane. Full details respecting the course to be adopted by a person seeking to be admitted as a solicitor on the Rolls will be found in an article on the subject given in Law Notes for September, 1884 (Vol. III. p. 265).

While there is still time we would draw the attention of the Law Society to the fact that there are several matters relating to the Final, Pass and Honors Examinations which require amendment, and before they proceed to order their notices, &c., to be printed for 1886, we trust that those whose duty it is to see that the Examinations are kept up to the spirit of the times, will read the "Notes on the Final" contained in the various numbers of the Law Notes during the last eighteen months, and see if some of the suggestions cannot be acted upon next year. In particular, we insist that a new method of classing the Honormen ought to be adopted. The present plan will have to be altered in the end, and "*Quanto citius, tanto melius.*"

We would draw the attention of those of our readers who intend presenting themselves at the June Final to the importance of the New Bankruptcy Rules epitomised in this Number.

NOTES ON THE INTERMEDIATE.

The Easter Intermediate Examination took place on Thursday, April 22nd, and our answers to the questions were published on Friday morning (the 23rd April), and have since been sent off to our subscribers.

The questions call for no particular comment at our hands: they were fair and straightforward ones, and we anticipate that no candidate will be allowed to pass who did not hand in papers showing that he had thoroughly done the work. For, with such straightforward questions, a strict method of marking is no doubt adopted. The result of the last June Intermediate was a postponement of about 40 per cent. of the candidates examined, and we shall not be surprised to see a repetition of this as the result of the examination on the 22nd ulto. We will, however, hope that it may not prove so.

The result of the Examination will be made known on Friday the 8th instant, when a list of the successful candidates will be exhibited in the entrance to the Law Society; and this list will also appear in the "Times" of Saturday morning the 9th instant.

The next Intermediate Examination is fixed for Thursday, June 18th; and the last day for giving ordinary notice will be Monday, the 18th inst. Renewed notices can be given up to and upon, but not later than, Wednesday, June 3rd.

The subjects for the Intermediate Examinations for 1886 will be announced in July, probably towards the end of the month. We have not heard that there is any likelihood of the subjects being changed. Indeed, we do not well see how the examiners can find a book so suitable at an early stage of articles as Stephen's Commentaries, especially if that work is kept well up to date.

"MEMS. ON STEPHEN."*

(*Continued.*)

How Uses originated.

Some mystery is involved in connection with the question how uses were introduced into England, but in all probability their introduction was effected by the clergy about the close of Edward III.'s reign, in order to evade the Mortmain Acts, which prohibited ecclesiastical corporations from acquiring lands.

Why Uses were perpetuated.

Because found useful, since by them lands could be devised by will, and could be secretly conveyed *inter vivos*. Forfeiture, escheat, debts, dower and curtesy could by their instrumentality be defeated, and they were used "to the utter subversion of the ancient laws of the realm."

Bacon's Complaint about Uses.

Lord Bacon complained that uses were "turned to deceive many persons of their just and reasonable rights. A man that had cause to sue for land knew not against whom to bring his action, or who was the owner of it. The wife was defrauded of her thirds, the husband of his curtesy, the lord of his wardship, relief, heriot and escheat, the creditor of his extent for debt, and the poor tenant of his lease."

How the Evils of Uses were remedied.

Uses were reformed and deprived of many incidents by several statutes, *e. g.* 50 Edw. 3, c. 6, 2 Rich. 2, st. 2, c. 3, 1 Rich. 3, c. 1, 19 Hen. 7, c. 15, &c., but they were not altogether annihilated and abolished until the passing of the famous Statute of Uses (27 Hen. 8, c. 10), which converted the *use* or equitable estate into the legal estate, and so made the former *cestui que use* the legal tenant, and as such subject to all the ordinary rules of law.

The Title of the Statute of Uses.

In conveyances and pleadings this statute is called "The Statute for transferring Uses into Possession."

Illustrations of the effect of the Statute of Uses.

(a) Lands by feoffment are conveyed to A. and his heirs to the use of B. and his heirs. Before the statute A. would have taken the legal estate and B. the equitable estate. But since the statute A. takes nothing, he is but a conduit pipe to pass the property to B., who, as by "parliamentary magic," takes both legal and equitable estate.

(b) A. bargains and sells his lands to B. and receives B.'s purchase-money. Before the statute, while no legal estate passed for want of livery of seisin, yet, as A. had received B.'s money, he was seised to the use of B. in equity; and so, while A. still retained the legal estate, B. was entitled in equity to the profits. Since the statute B.'s use is turned into the legal estate, A.'s seisin by force of the statute vesting in B.

* These "Mems." were commenced in the September Number of the Law Notes, 1884, and have been since continued from month to month.

To what Property the Statute applies.

As the statute only speaks of one person being *seised* of lands, &c. to the use, trust, &c. of another, it follows that the statute only applies to freehold estates and not to copyholds (the seisin in which is in the lord of the manor), nor to leaseholds, nor to pure personalty, of which a person is possessed and not seised. Consequently, if copyholds are surrendered or leaseholds are assigned to A. to the use of B., A. still takes the legal estate and B. only an equitable estate.

What requisites must exist to bring the Statute into Operation.

(1) As above shown the property must be freehold.

(2) There must be one person seised to the use of another person or corporation, and consequently if lands are conveyed in the common way to A. and his heirs, *habendum* "unto and to the use" of A. his heirs and assigns, A. takes the legal estate at common law, and not by virtue of the Statute of Uses, since there is no one seised to his use. (*Orme's Case.*)

(3) The seisin must be sufficient to support the use. Consequently if lands are conveyed to A. and his assigns to the use of B. and his heirs, while B. takes the legal fee under the statute, his estate will determine on the death of A., since before the statute, for want of proper words of limitation, A. would only have taken a life estate, and the statute does not give to the *cestui que use* any larger *quantum* of interest than the feoffee to uses would formerly have had.

Does the Statute of Uses apply to Wills?

While it is not necessary to insert a use in a will to confer the legal estate, yet it is clear that if uses are employed, the same effect will be given to them as if contained in a deed. Consequently where by will lands are given to A. and his heirs to the use of B. and his heirs, B. will take the legal fee under the statute. Had there been no use limited on A.'s seisin, A. would, without regard to the statute, have taken the legal fee, and there would be no resulting use to the heir of the testator. Whereas in a deed, if lands are conveyed simply to A. and his heirs with no expressed use and no consideration, a use is implied in favour of the grantor, and this is called a *resulting use*, and so under the statute the grantor remains seised.

NOTES ON THE PRELIMINARY.

The next Preliminary Examination is fixed for Wednesday and Thursday in next week, the 6th and 7th May.

In addition to the usual subjects—Elementary Latin, History, Geography, English Composition, Arithmetic, Dictation—each candidate is required to take up *two* of any of the following subjects:—

In Latin:—Cicero, De Amicitiâ; *or*, Horace, Odes, Books III., IV.

In Greek:—Euripides, Andromache.

In French:—Lesage, Gil Blas de Santillane, Liv. V., VI. and VII.; *or*, Racine, Athalie.

In German:—Goethe, Die Leiden des Jungen Werther; *or*, Lessing, Nathan der Weise.

In Spanish:—Cervantes, Don Quixote, cap. xxxi. to lii. both inclusive; *or*, Moratin, La Mojigata.

In Italian:—Beccaria, Trattato dei Delitti e delle Pene; *or*, Dante's Inferno, Cantos 1—10, and Gallenga's English and Italian Grammar.

The last day for giving notice was April 6th for an ordinary notice, and April 28th for a renewed notice. Anyone not having given notice can only now be examined on obtaining an order from a judge allowing notice to be given "*nunc pro tunc.*"

The July Preliminary is fixed for Wednesday and Thursday, the 8th and 9th days of July, and the language subjects, in *two* of which, according to his choice, each candidate will be examined, are:—

In Latin:—Livy, Book i.; *or*, Virgil, Georgics, Book iv.

In Greek:—Homer, Iliad, Book xvi.

In French:—Xavier de Maistre, Voyage autour de ma Chambre; *or*, Corneille, Horace.

In German:—Schiller, Buchheim's Deutsche Prosa, from pp. 15—95; *or*, Goethe, Reinecke Fuchs, Gesang, 1—9.

In Spanish:—Cervantes, Don Quixote, cap. xxxi. to lii. both inclusive: *or*, Moratin, La Mojigata.

In Italian:—Beccaria, Trattato dei Delitti e delle Pene; *or*, Dante's Inferno, Cantos 1—10, and Gallenga's English and Italian Grammar.

The last day for giving notice for this Examination will be Monday, June 8, and for renewed notice, Tuesday, June 23.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Answers to Correspondents.

W. V. Mulcaster.—14 Geo. 3, c. 78, is of general application and not limited to the Metropolis. (See *Richards* v. *Easts*, 15 M. & W. 244, and Wms. P. P., chap. on Insurance.)

Aklow.—A.'s liability would, we think, be barred by his order of discharge.

Clifford.—(1) We think so. (2) The land would seem to be parcel of the wastes.

W. H. W.—(1) If A. sues B. for a debt, say of 30*l.*, and B. claims that A. owes him a debt of 20*l.*;

this is a set-off. Had B. claimed 100*l.* for damages for libel, B.'s claim would be technically a counter-claim and not a set-off. (2) Rights of action on contract are choses in action within sect. 25 of the Judicature Act, 1873, and so are assignable; but this section does not seem to apply to torts, and, consequently, a right of action on a tort is not assignable. (3) Yes. (4) It is not.

Eye.—(1) If in either case the solicitor's conduct was wilful he would be liable, but if not *wilful* then he would only be responsible if the circumstances showed that his advice to his client showed him to be guilty of *ignorance* of the law. (2) The verbal contract will bind, but A. could not compel specific performance. His remedy would be to sell the 70 tons and sue B. for any loss.

F. W. Billson.—Thanks for your letter. We will consider the subject.

C. E. Pilling.—From the law as in Stephen.

D. F.—It is very difficult to advise without seeing the settlement, but we think from the facts as stated that the trustees might retain the securities as they existed at the death.

Nosueb.—(1) The vendor was, we think, acting within his rights, but for any injury done he would be responsible to the purchaser, and injury committed by the auctioneer would be deemed injury committed by him. (2) The *cestui que trust* has the right to compel the trustee to convey the trust property to him, or as he, the *cestui que trust*, directs. (3) *Cooper* v. *France* decided the point you refer to. The reason of the decision is that it was so under the old law, and that 3 & 4 Will. 4, c. 106, did not alter law which was clearly established.

Osric.—(a) Certainly not, *as* the debt was not incurred *before* the bankruptcy. (b) No, for it would become the property of the mortgagee. (c) Yes. (d) We do not think so, unless the settlement provided that the newly-acquired furniture should be so substituted.

A. T. B.—Sect. 14 only applies between *lessors and lessees*. If this relation existed in the case you state, we think sect. 14 would apply, though the clause is a peculiar one. The relation might or might not exist under a mere agreement.

J. J. Addison.—Thanks for your letter and suggestions, which we will, if possible, adopt.

W. E. Harris.—Stephen's Commentaries, 9th ed., and Gibson's Guide, 5th ed.

Ego Drisco.—Only on the Act of 1869, as the Act of 1883 is not incorporated in Stephen, 9th ed.

Aqu.—(1) We think on the 2nd February and 2nd May. (2) It seems not.

[We have been obliged to hold over a good deal of correspondence this month, but hope to give replies to letters received in our next Number without putting our Correspondents to the trouble of repeating their queries.]

LAW STUDENTS' DEBATING SOCIETIES.

The Birmingham Law Students' Society.

An Ordinary Meeting of this Society was held on Tuesday, the 14th ult. Mr. Edward Bickley presided. After the transaction of some special business a debate took place upon the following subject: "Is it necessary that a method of appeal in criminal cases should be provided by law?" The question is one which has recently occupied a good deal of public attention, having in fact been revived by the recent action of the Home Secretary in the case of Elizabeth Gibbons, who was convicted of shooting her husband at Croydon on expert evidence. A motion on the subject was quite recently introduced into the House of Commons by Mr. Hopwood, Q.C., in the words of the moot, and the Home Secretary in reply promised that it should receive the attention of Her Majesty's government. Mr. S. M. Slater, for the affirmative, insisted that the frequent miscarriage of justice warranted the legislature in providing a method of appeal as suggested by Mr. Hopwood, and condemned the present practice of submitting decisions which appear to be erroneous to the revision of the Home Secretary. Messrs. Cattell and Lynex followed on the same side. Mr. Frank Osborne, on the other hand, whilst admitting that the present system is inadequate and insufficient, and capable of improvement, strenuously opposed the suggestion of Mr. Hopwood for the establishment of a Court of Criminal Appeal. He contended, that the adoption of such a course would tend to render the trials in the first instance less careful and laborious than they are at present, and would entail great expense to the country, unattended by any corresponding advantage, and advocated that a limited appeal should be allowed in the form of an application for a new trial, making the consent of the judge who tried the case, or the fiat of the Attorney-General, a condition precedent to such application. Messrs. Stevens, Adcock and Arthur Smith followed on the same side. The leaders on either side having replied, the Chairman summed up, and directed the meeting, that on the wording of the moot it was sufficient for the affirmative to establish the necessity for *any* method of appeal. On the question being put to the meeting, the affirmative was decided, carried by a small majority. A vote of thanks to the Chairman concluded the meeting.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. June, 1885. Part 6.

SOME NOTES.

IS there or is there not any solid foundation for the attacks which have lately been made on masters of the High Court for the manner in which they perform or omit to perform their duties? One solicitor writes to "Modern Society" directly charging a master with a gross neglect of his duties. The letter is reproduced by the "Law Times" without comment. The writer states that it is the exception for masters to attend to their duties on Saturdays; that they are directors of companies, which necessitates absence from official duties several hours each week. Other letters have appeared signed "Lincoln's Inn Fields Firm," and "Another Lincoln's Inn Fields Firm," roundly charging them not only with neglecting their duties, but even with discourtesy. In one case the master is "named." The "firm" pursued him to his own room and found the door locked and the master gone, although it was 3 o'clock only. In another case a peremptory and curt refusal was given to an application to sign some order, because it was a minute or so "over time." Now these charges, in the interest of the profession and the masters, should not be allowed to remain unanswered; the masters owe it to themselves to call upon their calumniators to back up their statements. If they do not they allow a most serious imputation to rest on their conduct unchallenged. They must remember that although masters in name they are still paid by and are servants of the public.

The power and jurisdiction of the County Courts is ever on the increase. Now it is proposed to give County Courts power to grant divorces. How imperceptibly and yet swiftly does change, once started, proceed! Few amongst us youngsters remember the fierce opposition that existed when, in 1857, it was proposed to establish a distinct Divorce Court, and the dire results that croakers then croaked. Now scarce a dissentient voice is heard to the still more radical proposal to give a poor man the opportunity to get a divorce. The proposed Act gives the County Court all the usual jurisdiction of the High Court; but leave of the judge or registrar of the County Court will have to be obtained before the proceedings can be instituted. The applicant must swear he or she is not worth 25*l.* after certain allowances are made, and damages given must not exceed 50*l.* Truly a righteous Act and likely to do much good in the world. The separation of ill-assorted couples can but tend to the peace of society at large.

The various cases which have recently occupied the attention of the Courts call attention most emphatically to the defects of the existing lunacy laws: on this there appears to be great unanimity of opinion. Curious, that these cases were not concerned directly with the sanity or insanity of the individual, but with the question whether the certificates were granted in conformity with the Acts. It is alarming to think how carelessly these provisions were observed and how imperfect the certificates on which these "keepers" were willing to act. But that was but natural; when a man has a pecuniary interest in getting a patient, he will not too closely inquire whether the certificate is in proper form, or, in fact, whether there is lunacy or not. We go in dread till the lunacy laws are altered. No power on earth will get us into a cab on the persuasion of a stranger. We might be interviewed, certified and walked off before we fully realized the situation.

The old point is cropping up again as to the rights and liabilities of firms who have country and London offices to charge for agency work, and as to the certificates necessary. The certificate, there can be no doubt, is for the solicitor, not for the practice; therefore if a solicitor pays the 9*l.* duty, as the greater covers the less, surely he could have offices and practise in town and in four or five or more suburbs. As to charging for agency work; can any one give a good valid reason why the London firm should not charge its country half agency? if the firm had no London offices they must have agents, and so where the injustice? However, if the Court ever has to decide the point, of course, there is no doubt what the decision will be.

Bastardy law is a point of some interest to country practitioners. They should note the case of *Billington* v. *Cyples* decided by the Divisional Court. The Bastardy Acts provide that the mother shall make application for an order on the father within twelve months of birth, and also that if she becomes chargeable to the parish the guardians may apply. In this case the guardians applied, obtained an order, and the father paid. The mother came out of the workhouse, and then applied herself, but after twelve months; held that the application was bad, and that the previous application of the guardians was not the application of the mother although made at her instigation.

A point that wants enforcing. A person getting furniture on the hire and purchase system is guilty of larceny if he removes and sells the furniture without the knowledge of the true owner and before all

the instalments are paid. This was settled by a very strong Court for Crown Cases Reserved. Bailees must not convert the property to their own use, or they will be guilty of larceny within 24 & 25 Vict. c. 96.

What a lot of burning topics there are now-a-days for correspondence! How the old-fashioned lawyer must open his eyes; heave a sigh; remove his glasses, wipe them carefully, and with deliberation re-adjust them on his nose, to slowly re-peruse the astounding suggestions that he now sees every week in the law papers! Are solicitors justified in delegating their work to the extent they are now in the habit of doing? The head of a highly respectable firm now-a-days knows as much about the actions and small matters pending in the office as the newly joined articled clerk. Why he is absolutely not ashamed, even before his client, to call down his pipe for Mr. Jones to bring up the papers in *Green* v. *Green*, and kindly explain the position of the action; and the client, instead of questioning the propriety of this delegation on the part of his agent, goes away with awe-struck soul, and eventually pays his bill, however heavy, without a murmur, so overcome is he with the importance of "his lawyers." But supposing *Green* v. *Green* went hopelessly and utterly wrong, would that solicitor be liable? Most certainly; they do not deny their liability, and the client knows he has a better chance of damages against the eminent firm of "Messrs. Wrightletter, Club, Lunch & Co.," than against Mr. Jones. All parties appear content, so what is to be done?

Curious what a tendency there is now for old and antiquated offences to crop up. First, there was maintenance; now it is "embracery." What is embracery? It is of three kinds. Firstly, an improper attempt to influence a jury; secondly, the kissing of a girl, on the strength of a false promise to marry—for this offence a heavy penalty is often inflicted; and, lastly, we have the embracery which was involved in the curious case of *Kennedy* v. *Lyell*. By an ancient statute passed in good King Hal's time, embracery is the offence of buying a "pretence" title to land, the penalty for which is heavy—half the lands go to the Crown, and half to the common informer. Now it will hardly be credited, that the whole of this long action has been to determine, not who was entitled to the disputed property, but whether or not the defendant had, in buying up the claims of other claimants, been guilty of the offence of embracery. The Court held that the offence had not been committed, for the plaintiff had failed to prove that the defendant had the knowledge that the title was bad. So the unknown heir is still unknown; meantime the trustee collects the rents and profits; claimants a many there will be, but when the true claimant succeeds will there be anything to succeed to? We would sooner be the solicitors than the claimants.

So, in order to claim under an accidental insurance policy, notice of the accident must be given before you know whether you are hurt or not: that is, suppose you trip up and fall; you pick yourself up, and feel no injury; nevertheless Mr. Baron Pollock has practically decided in the case of *Cassell* v. *Lancashire and Yorkshire Accident Co. Limited*, that you must give notice at once in case an injury may afterwards develop, when the policy provides that notice of the action must be given to the company within fourteen days. In this case, plaintiff received an injury in July; he did not feel any evil effects till the 17th of the next month, on the 26th he was laid up, on the 28th he gave notice. Held, the notice was not in accordance with the terms of the policy, *i. e.*, not given within fourteen days of the accident. All right, now we know the law; we must give notice of having had an accident before we know we have had one, or, in other words, shout before we are hurt.

When will people appreciate the distinction between a promise and a contract? Fancy working away, making scriptural extracts and references, for a clergyman, for seventeen years on the strength of a vague promise that you will be remembered in his will. This, it was shown, Mrs. Plowman, the plaintiff in *Plowman* v. *Courtney*, had done. There was no provision in the will, and the disappointed worker brought an action, but was advised to abandon it: there was no contract. In the law you may promise as much as you like, but don't contract, except in the case of promise of marriage, which the law says is a contract, and in that case the law will compel you to contract yourselves together or pay damages.

Suburban residents will be delighted with the decision of Mr. Justice Cave, that a brickfield, although it does not cause illness or any particular kind of disease, may, if it interferes with the comfort and enjoyment of owners of property, be restrained as a nuisance. This point was involved in the case of *Dunston* v. *Neal* and *Seely* v. *Neal*. His Lordship took the opportunity "to drop" on certain inspectors, who for four years had failed to find out anything about the improper use of the brickfield for animal refuse. Inspectors have a positively wonderful way of inspecting and finding nothing: especially when the owner of the nuisance is friendly.

Lord Coleridge the other day, in a light and air case, before coming to Court went and inspected the premises himself. His Lordship then stated in Court his opinion of the dispute, and adjourned the case for a week for the parties to come to terms. But what

was the good of the special jury? the case involved questions of fact; the jury, not Lord Coleridge, should have inspected the premises. We should like to see this idea carried out, especially during the summer months. The action is for trespass, say; let the Court sit under a sheltering tree on the disputed territory; luncheon for all concerned supplied by Fortnum and Mason to be costs in the cause. If this procedure is adopted we shall go to the bar most certainly.

Another illustration of the criminal rule, that he who commits a criminal act must be held answerable for all the consequences. Mrs. Sullivan enforced an argument with a poker applied to her opponent's head. In some cases we admit that a poker does appear to be a convenient weapon wherewith to make an impression on a hard-headed argumentative opponent. Unfortunately for Mrs. Sullivan, her hard-headed argumentative opponent was a drunkard, and in consequence of her drinking propensities the blow killed her, and Mrs. Sullivan goes to penal servitude for five years. Moral, never in argument resort to pokers.

The novelty, as Mr. Justice Pearson aptly described it, of the claim in the case of *In re Hudson, Creed* v. *Henderson*, was simply astounding. Novelty is, no doubt, the polite and proper expression for the bench to apply; those not so elevated would call it "cheek!" Mr. Hudson, the well-known soap manufacturer, gave, during his life, munificently to various charitable institutions connected with the Congregational Union of England. He promised other large sums by instalments, but died leaving these very large instalments unpaid, and for these they brought an action. His Lordship had no hesitation in declaring that they had not a ghost of a claim; there was not the slightest pretension to a legal debt. His Lordship further observed "that he did not know, if the claim was allowed, to what extent a new form of posthumous charity might grow." With all due deference we fancy if the claim had been allowed, charities would have severely suffered; men would have hesitated about promising money by instalments if they and their executors could be sued for it. Under the circumstances were not the executors a little too magnanimous in offering to pay the costs out of the estate?

Imagine a judge at the present day admitting, nay, stating it positively as his opinion, that a solicitor gave his client very sound and sensible advice. What case, which judge, where and when? naturally inquires everyone. In the case of *Daggett* v. *Hillier*, in which defendant entered into a stupid agreement for the purchase of a business, and then, after the manner of clients, went to her solicitor after the mischief was done: the solicitor having previously, as Mr. Justice Cave said very properly, advised her not to be in a hurry.

That money lender at Bristol who lent a butcher 20*l.* at 130 per cent. will, we assume, transfer his business to some town where judges administer law and not "rough and ready justice." The judge of the County Court gave judgment for the full amount repayable by instalments of 6*d.* a month. We have no sympathy with money lenders, especially when they want to be paid, but a butcher is generally a man who can pretty well take care of himself. Did not probably the money lender, in this case, fall among Philistines? Assuming a man knows the nature and disposition of the local judge, would it not pay to borrow at an exorbitant rate, wait to be sued, and then repay debt and interest by sixpenny monthly instalments? No money lender would take the bother to collect the instalments for long; certainly if he did, his executors would not. His Honour's judgment reminds one of the pound of flesh and no blood; the only difference here is the pound of flesh and blood by drops: the decision is curious, but the judge is on the spot, and probably knows his man.

More unpunctuality on the part of a railway company: our readers well remember the decisions in *Woodgate* v. *G. W. R.* and *Cooper* v. *G. W. R.* to which we devoted an article in January Number of this year. The latest case is *M'Cartan* v. *N. E. R.*; the facts present no material difference. Train advertised to meet another train in connection with steamer; the whole arrangement being advertised as through communication; first train more than half an hour late; believers in through communication consequently woefully disappointed; action for damages for breach of contract; company falls back on usual clause protecting it from liability for delay, &c., &c. Divisional Court overruled County Court Judge, and held that company not liable, and, worst of all, declined leave to appeal. Now the refusal of leave to appeal in Cooper's and Woodgate's cases was sufficiently unjustifiable. Mr. Baron Huddleston and Mr. Justice Wills, who constituted the Divisional Court, would do well to remember that there is not general unanimity of opinion about these decisions, and a little less self-confidence in the correctness of their own opinions would have been desirable. We still think that a man or company who, by offering some particular inducement or advantage, induces another man to enter into a contract and pay money, ought to be liable for something if he fails to do the very thing that induced the other person to pay down money, unless, of course, prevented by "vis major." Evidently, however, we are wrong.

Railway companies certainly do not often deserve our sympathy. The action brought against the South Western seems a little hard. The plaintiff's claim was for personal injuries, caused by the action of the brake. It appeared from the evidence that the train was fitted up with an automatic brake; the couplings broke; that caused the connecting pipe to break, whereby the air was admitted, the effect being to instantly apply the brake with great force. Mrs. Holton, who was riding in a third-class carriage next the guard's van, suffered a severe jerk, the effects of which, from the medical evidence, appeared very serious. Of course the question of the company's liability simply turned on the question, Was the breakage of the coupling due to any defect that could have been found out? The jury found there had been a want of proper care and skill in the manufacture. This, of course, was equivalent to a verdict for plaintiff. What are the unfortunate companies to do? If they do not have brakes, and an accident occurs, it goes badly with them; if they have an accident, and the brake automatically stops the train, it still goes badly with them. Obviously they must cushion their third-class carriages better.

Those wonderful detectives who now loaf about the entrances to the Law Courts are really very amusing: they remind one of that celebrated ostrich who, by hiding his head, logically concluded that as he could see no one, no one could see him. Do they flatter themselves that they deceive anyone except the country cousin? If so, they are most vastly mistaken. A dynamiter having malicious intention on the building would certainly take observations for a few days previously: he would speedily find the same man in the same clothes, at the same entrance every morning; talking to policeman; holding his arms as a policeman, *i. e.* bowed out to make room for rolled cape and truncheon; standing in a policeman's position; blowing his nose in the leisurely manner peculiar to policemen; surely he does not think smoking a cigar throws any one off the scent. Nay, truly the whole thing is a farce: better by far put them back in uniform and make a more imposing show of protection. These men are not detectives; they are plain, very plain clothes constables.

At the Middlesex Sessions the other day, Alfred Cousins was charged with obtaining money by false pretences, and, vainly hoping to evade the toils of the law, he refused, when called upon, to plead. It is probable that he would not have shown this heroic spirit of defiance, had the old law as to prisoners who stood mute been in force. The terrors of the *peine forte et dure* would probably have cowed his resolute heart, and between the two alternatives of simply saying "Not Guilty," and of being loaded with weights until he was either induced to plead or pressed to death, he would probably have chosen the former. But this *peine forte et dure*, though we believe it was actually put into practice with fatal result as late as 1741, was virtually abolished by 12 Geo. 3, c. 20. By that statute, when it is a matter of doubt whether or not a prisoner is mute of malice, the Court may direct a jury to be empanelled and sworn to try whether the prisoner is mute of malice or *ex visitatione Dei*. If a verdict is found to the former effect, the prisoner shall be convicted and have the same judgment and execution awarded against him, as if he had been convicted by verdict or confession. Thus ignorance of the resources of the Criminal Law made Mr. Cousins' resistance to its majesty in vain. For he was found mute of malice, tried, convicted of the offence alleged against him, and sentenced to 20 months imprisonment with hard labour. Those of our readers who feel any curiosity on the subject of the *peine forte et dure* should read an interesting novel by Mr. Hall Caine, called "The Shadow of a Crime," which deals with the subject.

The Divisional Court has just decided that to put forward an exaggerated claim under a fire policy is not a fraud. It was shown that, as is well known, the company always cut down all claims, and that in consequence people always put it on a bit. Lord Coleridge said that the direction of the learned judge in the Court below was quite correct. No doubt to make an overclaim was morally wrong, but was there any fraudulent intent? Now suppose A. sends in a claim for 150*l.* knowing his loss to be only 100*l.*; the company mildly suggest that the claim is excessive; A. sticks to his text, not with any fraudulent idea, but merely "putting it on," as he feels sure the company will resist and cut it down. The company suddenly, without further demur, pay the 150*l.* Is not A. guilty of something very like fraud, Oh! learned judges, if he puts that surplus in his pocket? But the case illustrates strongly the necessity for statutory alteration of the law of insurance. When a man applies to insure, the company ought to be compelled to send a surveyor, value the property and goods, and offer to insure for the amount they think fit. If this amount was once properly ascertained, subsequent partial damage would be much easier of estimation; in the event of total damage the insurers would, of course, have to pay the full amount.

That action against some tea merchants for damages for refusing to take certain almanacks ordered by them for distribution *gratis* to every purchaser of 5lb. of tea or upwards was not particularly interesting from a legal point, but the evidence was amusing. One almanack represented a young lady named "Evelyn," the other was "Florence," but the artist himself admitted he did not know which was which; but of the copies he knew one was a "little hard,"

whether in heart or not he did not say, and the other was "very bad," whether in character or not he was also silent. The judge thought one young lady had too much colour, and the other not enough. But the funniest remark was that the almanacks were daubs, so unlike the originals that customers complained that they were only fit for the kitchen, not for the drawing room! Mr. Ruskin surely cannot complain of want of art appreciation amongst the middle and lower classes now: consider the artistic taste and criticism necessary to determine when a chromo-litho' almanack is sufficiently good for the drawing room, and when it can only take kitchen rank.

Can the word "Eton" be registered as a trade-mark in connection with cigarettes? Lamberts made cigarettes and called them "Eton." Wood & Co. applied for an injunction to restrain the use of the word on the ground that they had registered it as a trade mark. To this Lamberts simply replied that the word did not constitute a trade mark within the meaning of the Act. There was much evidence to show that the word "Eton" in the trade only meant a particular size: it also appeared that plaintiffs supply other cigarette dealers with boxes labelled with the word "Eton," and then allow the dealers to put their own labels on the boxes in addition. Often, then, often, we have smoked these celebrated Etonian Wood's cigarettes and knew not. Mr. Justice Pearson granted the injunction, and suggested that the reprehensible practice of allowing other dealers to appear as the manufacturers, when they were really not, should be discontinued.

Of course, there cannot be the slightest doubt that the French pennies are not legal tender, but we have grown so accustomed to the foreigner, that no doubt many people feel the action of the tram company in refusing to accept French pennies as distinctly vexatious. How ignorant must that gentleman have been of the rudiments of law who tendered a French penny, and allowed himself, on principle, to be summoned by the tram company, sooner than pay in the proper coin of the realm! We suppose, if it had not been for the action of certain ill-advised persons who stamped these coppers with their advertisements, we should have continued accepting French pennies. We are perfectly willing to take any number of French pennies people like to send us for nothing now they can have no use for them, provided, of course, they are not stamped with an advertisement: if we only get enough, we will go to Normandy for our summer holiday. How about this new device—pasting a paper label on our own pennies; is not this "defacing" current coin?

Both the facts and decision of *Bluck* v. *Lovering* deserve notice. Bluck, a tailor, brought an action against Lovering, who had been appointed receiver on the dissolution of partnership between Bluck and his former partner. Lovering, who of course had to indorse all the cheques received, by error indorsed "receiver in liquidation" instead of "in Chancery." Bluck sued him for libel. Lovering paid 10*l.* into Court. At the trial Bluck wanted to produce evidence of the loss of particular customers as a consequence of this mistake. The judge said this evidence could not be produced. The jury found for the plaintiff, damages 10*l.*, the amount paid into Court. The Divisional Court has just held that the judge was right in refusing to allow evidence of "special damage," which had not been claimed in the action. It is not, as everyone knows, in libel necessary to *prove* "special damage," but apparently you have got to ask for it. Evidently, never be afraid of asking when drawing your pleadings. But if this was the ground, might not the judge have allowed the pleadings to have been amended at trial?

Mr. Flowers really lays himself open to the imputation of being slightly lacking in a proper spirit of loyalty. A rascal of a newsboy, on the strength of the death of "Queen Emma," shouted out "Death of the Queen." Some dear old gullible gentleman gave 2*d.* for a paper, and finding he had been done summoned the boy. Mr. Flowers said the act was very wrong, but did not consider the prisoner's case serious enough to send to trial, and discharged him. Now it must not be supposed from this that Mr. Flowers did not consider it a serious offence, but being "false pretences" he had no power to try the prisoner summarily, and hesitated to send him to trial: surely the magistrate's summary jurisdiction needs amplification in this respect. Is there then no law existent which can be put in force to stop the mouths of the loud-voiced lying newsvendors? "War declared against Russia!" we heard one night in stentorian tones, and then *sotto voce* "by Lord Randolph Churchill." On another occasion, at one of the most anxious periods of the recent crisis, "Another great battle," and here the paper was also to blame, for its contents bill contained the same statement: the fact that the battle was in Canada not in Afganhistan, though, made all the difference. Again, in a whisper "Rumoured," with the bellow of a bull "Resignation of Mr. Gladstone." There are certain old statutes of the reigns of Edward I. and Richard II., making it a misdemeanor punishable by fine and imprisonment to spread false news so as to cause discord between the sovereign and the nobility or concerning any great man of the realm. Probably the statements as to Mr. Gladstone and Lord Randolph Churchill would come within these statutes; they certainly are great men of the realm: but here, again, the proceedings must be by indictment. Kings Richard and Edward

did not understand "summary convictions;" King Hal the Eighth was the man for those. There is, it seems, no summary remedy against these blatant paper men; you must charge them with obtaining twopence by false pretences, and regularly get them committed for trial. Oh! what a free country is England.

The Law Students of the country are about to meet in Congress, and in another column will be found a preliminary syllabus of the proposed proceedings. We understand that more than sixty country delegates will be present.

Holders of "Lovat Peerage Bonds" will do well to glance down the Stock and Share List and see what price "Tichborne Bonds" are now quoted at. What, are they not quoted? Surely, then, the "Stock Exchange" having now won everybody's money, should allow the "Lovat Peerage Bonds" a quotation; what an opportunity for "bulling" and "bearing!" In the event of success, 700*l.* for every 100*l.* subscribed. How about champerty? Maintenance, we have seen, is not dead. How about its brother doctrine?

We do not concern ourselves much with the doings, or rather "not-doings," of the benchers. Whose was the bright and genial wit to imagine that happy device to get in arrears of fees, rent, &c.? Said the notice: no application to attend the ceremony and dinner when the son of the Prince of Wales is made a Bencher will be attended to from members who do not before a certain date settle up all arrears. This is making use of royalty with a vengeance.

CASES OF THE MONTH.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXIX., where further details of the case may be found.]

I.—CASES CONFIRMED, REVERSED OR ALTERED ON APPEAL.

[The references under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., Tudor, and Student's Conveyancing refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, Tudor's Conveyancing Cases, and Gibson & McLean's Student's Conveyancing, and indicate the page at which a note of the decision should be entered.]

Dixon v. The Royal Exchange Shipping Co.

(T. 490.)

The decision in this case (*ante*, p. 38) has been reversed by the Court of Appeal. The action was for non-delivery of 147 bales of cotton, shipped by the plaintiff on board the defendant's steamer, under a bill of lading, which stated that the goods were shipped "under deck," and loss by jettison was one of the excepted perils. The cotton was stowed *on deck*, and the 147 bales were properly jettisoned; and the question arose whether the owner of the cotton was entitled to sue on the bill of lading, or was bound to proceed for general average contribution. The Court of Appeal held that, in the absence of custom, the master of the ship had no right to jettison deck cargo, and consequently that an action lay on the bill of lading.

(6 Fisher, p. 1291; Newson on Shipping, p. 68.)

Field, In re.

(W. N. 89; S. J. 438; L. J. 90.)

The decision in this case (Law Notes, Vol. IV. p. 122) has been affirmed by the Court of Appeal.

Inderwick v. Leech.

The decision in this case (*ante* p. 10) was affirmed by the Court of Appeal.

Keltenback v. Lewis.

(W. N. 102; L. J. 97.)

The decision of the Court of Appeal (2 Law Notes, p. 202) was varied by the House of Lords. In this case Keltenback, in business abroad, had consigned to B., his broker, certain goods for sale. B. employed Lewis to sell the goods for him. Lewis had other transactions with B., in respect of which Lewis had made *bonâ fide* advances to B. B. died insolvent, owing both Keltenback and Lewis money. At the time of his death Lewis had goods of Keltenback which had been consigned to B. for sale, some of which had been agreed to be sold before B.'s death and others had been sold since that event. Lewis had also in his hands proceeds of the sale of goods sold before B.'s death. Keltenback sued Lewis to recover the moneys for the goods belonging to him thus sold by Lewis as agent for B. The House of Lords held that Keltenback was entitled to the surplus of the proceeds of the goods sold before B.'s death, subject to Lewis's lien for the specific sum which he had advanced to B. upon it; but that Keltenback's claim to the proceeds of the other goods

was subject to a general lien for money owing by B. to Lewis, under the provisions of the Factors Acts.

Parker, In re, Turquand, Ex parte.

The decision of Cave, J., in this case (see *ante*, p. 42) to the effect that an official receiver could not after the adjudication and before the appointment of a trustee, sell the debtor's property, has been reversed by the Court of Appeal. The grounds of the decision are given in the Bankruptcy Cases for this month. (See *infra*.)

Pethybridge v. Barrow.

(W. N. 83; S. J. 419; L. T. 459.)

The decision in this case noted in Law Notes, Vol. III., p. 167, was reversed on appeal, the Court of Appeal holding that the testator did not intend to constitute himself a trustee of the bond, but intended to make a gift, and as the gift was imperfect, the donee's claim must fall to the ground. This decision follows *Milroy* v. *Lord* and *Breton* v. *Wolven*. (Snell, p. 73; Aids to Equity, p. 20.)

II.—GENERAL CASES.

[For explanation of references, see previous heading.]

If an agricultural or pastoral tenancy from year to year is, by agreement, determinable by a "six months'" notice, does the Agricultural Holdings Act, 1883, make a year's notice necessary?

Barlow v. Teal.

(T. 491; W. N. 114; L. J. 104.)

It does not, the Divisional Court decided, since the provision of the statute only applies to tenancies determinable by "half a year's" notice, and it has been the law for centuries that "six months' notice" is not equivalent to "half a year's notice." The case follows *Wilkinson* v. *Calvert*, commented on in Law Notes, Vol. II. p. 368.

(Prideaux, p. 26; Student's Conveyancing, p. 313.)

Is a banker who gives immediate credit to a customer for cheques paid in to his account, and which have been indorsed by him "per proc." without making inquiry as to the customer's right to do so, protected from liability by sects. 60 and 82 of 45 & 46 Vict. c. 61?

Bissell v. Fox & Co.

(T. 452; L. T. 24.)

If negligence is established against the bankers—as in the above case—the statute in question affords no protection.

If by articles of partnership it is agreed that on a dissolution the expelled partner shall be paid by the other partners for his share "in the stock-in-trade, credits, property and effects of the business," can the expelled partner claim that the value of the goodwill of the business be taken into consideration when assessing the amount to be paid to him?

Chapman v. Hayman.

(T. 397.)

Day, J., decided that there being no reference to the goodwill it could not be taken into account, and so a negative answer is given to our question. (Compare *Hall* v. *Hall*, 20 Beav.; *Stewart* v. *Gladstone*, L. R., 10 Ch. D. 657; and *Arundel* v. *Bell*, 52 L. J., Ch. 537; 55 Fisher, p. 964; Pollock's Digest of Partnership, p. 88; Aids to Equity, p. 142; Student's Conveyancing, p. 481.)

Under the now usual condition allowing the vendor to rescind the contract "if the purchaser shall take any objection, or make any requisition as to the title, evidence or commencement of title, conveyance or otherwise which the vendor is unable or unwilling to remove or comply with," can the vendor withdraw if the purchaser, after the vendor has refused to answer his requisitions, delivers further requisitions, and insists on the vendor's answering them as far as he can notwithstanding the condition?

Dames and Wood, In re.

(W. N. 96; S. J. 454; L. J. 90; L. T. 24.)

Bacon, V.-C., held that the vendor could under the circumstances withdraw, and the Court of Appeal affirmed his decision. And this, although the purchaser ultimately withdrew his requisitions and objections, and stated that he was willing to complete the purchase. Compare *Hardman* v. *Child*, *ante*, p. 94.)

(7 Fisher, p. 370; 1 Prideaux, p. 16; Student's Conveyancing, p. 36.)

If a married woman prior to 1st January, 1883, becomes entitled to a contingent interest in property, which on or after that date becomes a vested interest, does sect. 5 of the Married Women's Property Act apply so as to make the property the separate use property of the woman?

Dickson, Re, Dickson v. Smith.

(L. J. 92.)

In this case a testator, who died before 1883, by a codicil gave certain property to and amongst

the children of his son William, who "being a son should attain twenty-one, or being a daughter should attain that age, or marry under that age with the consent of her guardian or guardians." One of the daughters, in 1879, married at sixteen, with the consent of one of her three guardians subsequently obtained, and the question we have set out above arose, viz., whether her interest in the property belonged to her for her separate use. Bacon, V.-C., held that sect. 5 of the Act of 1882 applied, and consequently that the property was separate property, and this though the woman, while still an infant, had settled it—since the settlement, not being made under 18 & 19 Vict. c. 43, could be avoided by her on attaining twenty-one. The question is consequently answered in the affirmative. (4 Fisher, p. 351; Snell, p. 375; Aids, p. 106; Student's Conveyancing, p. 20; Thicknesse's Husband and Wife, p. 250.)

If A. is guilty of overstocking his coppice with game which do damage to B.'s (the adjoining farmer's) crops, can B. recover damages?

Farrer v. Nelson and Another.

(W. N. 106; L. J. 100.)

Most certainly he can, decided the Divisional Court, in confirmation of the County Court judge's decision. The maxim "Sic utere tuo ut alienum non lædas" applies in this as in other cases.

(Shirley, p. 241; Indermaur, p. 309.)

What remedy has a mortgagor against a mortgagee for a wrongful and oppressive sale of the mortgaged property?

Fennell v. Gardner.

(T. 397.)

Clearly he has no remedy at common law, for, as Brett, M. R., remarked, directly the mortgagor made default the property at law became the mortgagee's. The mortgagor's only remedy is to sue for an account, and if it turns out the mortgagee has received or ought to have received more than was due to him for principal, interest and costs, the balance will be ordered to be paid to the mortgagor. In the above case the amounts due to and from the mortgagee balanced, and so, though the mortgagee had, as the mortgagor alleged, sold the property oppressively, the mortgagor was without remedy. The mortgagee is not, in selling, a trustee for the mortgagor, and so bound to use every precaution in the mortgagor's interest, but he is a trustee of any surplus which may be in his hands. This was settled in *Warner* v. *Jacob* (2 Law Notes, p. 142).

(Fisher, p. 640; Fisher's Mortgages, p. 457; Student's Conveyancing, p. 220.)

Some points on the effect of the Solicitors' Remuneration Act, 1881, and Remuneration Order, 1882.

Fleming v. Hardcastle.

(W. N. 106; S. J. 472; L. J. 103; L. T. 43.)

The four following points were decided by Pearson, J., on the above Act and Order: (1) The Act and Order apply to business commenced before but not concluded till after the Order came into operation. This follows *Re Lacey* (L. R., 25 Ch. D. 381, and 3 Law Notes, p. 7, and *Re Field* (33 W. R. 553, and *supra*). (2) The Act and Order, notwithstanding the words of sect. 2 of the Act, apply to conveyancing business connected with an action. This follows *Stanford* v. *Roberts* (L. R., 26 Ch. D. 155; 3 Law Notes, p. 74). (3) The scale fee allowed by Schedule I. of the Order applies even though the title to the whole of the property had not been thoroughly investigated, provided the investigation had proceeded as far as was necessary. This seems to somewhat conflict with *Re Lacey, supra*. (4) In a case where the purchaser's solicitor prepares the contract for sale he is entitled to charge for it under Schedule II., in addition to charging the usual scale fee for investigating the title, &c. under Schedule I., because the scale fee in favour of the *purchaser* does not cover the preparation of the contract.

Will the Court by injunction restrain a vestry from using steam or other rollers, so as to damage the pipes or works of a gas company who are authorised by statute to place mains and pipes in the road?

Gas Light and Coke Co. v. The Vestry of St. Mary Abbotts, Kensington.

(L. J. 91.)

This is an injury which will be restrained by injunction, the Court of Appeal decided.

(4 Fisher, p. 503; Snell, p. 586; Aids to Equity, p. 160.)

Can money paid for an illegal object be recovered back?

Hermann v. Jenchner.

(W. N. 97; L. J. 90; L. T. 24.)

In this case it appeared that the plaintiff had been convicted of keeping a disorderly house, and had been required to find a surety for his good behaviour in 50*l.* for two years. The defendant became his surety, but only on the plaintiff depositing with him 49*l.*, to be returned at the end of the two years, if the defendant was not called upon under his suretyship. The plaintiff sought to recover this 49*l.* before the two years had expired, on the ground that it had been paid for an illegal object; and the Court of Appeal decided that the money could not be recovered, for the illegal object was apparently complete on the deposit of the money, and the rule is, that an action to recover money paid for an illegal object cannot be maintained, if the matter is executed and complete. The case of *Wilson* v. *Stringwell* (50 L. J., M. C. 145) is overruled.

(Shirley, p. 118; Indermaur, p. 258.)

If a landlord covenants to keep the drains on the demised premises in repair, is he liable for the damage arising from non-repair, in a case where he had no notice of the want of repair?

Hugall v. McLean.

(S. J. 454; L. J. 98.)

The Court of Appeal, on the authority of *Makin* v. *Williams* (L. R., 6 Ex. 25), decided that he was not. There is in such a case a condition imported into the covenant to the effect that the landlord shall have notice of the want of repair, before he can be called upon under the covenant to make it good. And this is so, even though, as was the fact in the above case, the landlord is, under the terms of the lease, empowered to enter the premises at any time for the purpose of complying with the terms of the covenant.

(4 Fisher, p. 1566; 2 Prideaux, p. 12; Student's Conveyancing, p. 294.)

Is a tenant for life of settled land entitled to have charges, which prior to the Settled Land Act, 1882, had been created by him under the Improvement of Land Act, 1864, paid off out of "capital money" derived by dealing with the settled land under the Act of 1882?

Knatchbull's Settled Estates, In re.

(T. 398; W. N. 88; S. J. 419.)

The Court of Appeal said that he is not. Sect. 21 of the Act of 1882 allows capital money to be employed (*inter alia*) in paying off incumbrances affecting the settled lands, but a charge created, prior to the Act of 1882 coming into operation, under the Improvement of Land Act, was not an incumbrance within the meaning of sect. 21; to hold it to be would, said Cotton, L. J., alter entirely the right of the tenant for life and remainderman *inter se*.

(Enter as a note to sect. 21 in books on Settled Land Act, 1882.)

Does rule 11 *of Schedule* I., *part* I., *of the Solicitors' Remuneration Order apply so as to entitle a solicitor to charge the scale fee on a re-investment in land of money paid into Court under the Lands Clauses Act?*

Merchant Taylors' Company, In re.

(W. N. 85; S. J. 438; L. J. 85; L. T. 459.)

This rule provides that in cases of sales under the Lands Clauses Consolidation Act, or under any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall *not* apply. Chitty, J., held that this rule did not prevent a solicitor being entitled to charge the scale fee with regard to a purchase of lands made as a re-investment of money paid into Court by a railway company, and consequently our question is answered in the affirmative.

If A., on the marriage of his son B., by settlement provides an annuity for B. for life charged on his real estates, and subsequently he by will devised his real estates, subject to the charges thereon (there being no other charge but the annuity), to his eldest son for life, and gave legacies amounting to some 80,000*l.* *to B., does the doctrine of satisfaction apply so that B. cannot have the* 80,000*l.* *and also the annuity of* 1,000*l.*?

Montagu v. The Earl of Sandwich.

(T. 399; W. N. 86.)

Pearson, J., considered that from the affluent circumstances of A., which he was justified in looking at, and the language of the settlement and will, there was sufficient evidence of an intention to rebut the strong presumption which the Court holds to exist against double portions, and that B. was entitled to the annuity as well as to the 80,000*l.* Had A. wished that the annuity should cease with the gift of the 80,000*l.* to B. he would have probably said so.

(Snell, p. 253; Aids to Equity, p. 57.)

Can a married woman elect, when the fund out of which, if she elects against the will, compensation will have to be made, is settled upon her for her separate use with restraint upon anticipation?

Quœde's Trusts, In re.

(W. N. 99; S. J. 456; L. J. 94; L. T. 24.)

That a married woman can elect as a *feme sole* under the Act of 1882 is clear, when the property, the subject of election, is free from any restraint on anticipation (see Law Notes, Vol. IV. p. 12); but whether she can do so when there is such a restraint, is a question which Mr. Justice Chitty found some difficulty in deciding. After reviewing the cases bearing on the subject (*Willoughby Middleton*, 10 W. R. 460; *Smith* v. *Lucas*, 30 W. R. 451; *Tussaud* v. *Tussaud*, 26 W. R. 874; *Codrington* v. *Lindsay*, 21 W. R. 182; and *Wheatley, In re*, L. R., 27 Ch. D. 606), he was of opinion, that whatever might be his own view of the principle which should govern in deciding the question, he was bound by the decision in *Willoughby* v. *Middleton*, to hold that a married woman might elect even as to property subject to restraint; and so our question is answered in the affirmative.

(3 Fisher, p. 887; Snell, p. 225; Aids to Equity, p. 51.)

If A. takes a promissory note from B. and C., man and wife, C. acting under the influence of her husband, and signing the note without being acquainted with the nature of the liability she is incurring, can the security be enforced against C.?

Sanguinetti v. Messiter and Wife.

(T. 459.)

In the above case, a jury having found that a promissory note signed by B. and C., man and wife, in favour of A., for a loan of money to B. at 60 per cent. interest, had been signed by C. without knowledge of the nature of the document, and by the pressure and undue influence of B., Manisty, J., held that the note could not, as far as C. was concerned, be enforced; and so a negative answer is afforded to our question.

(Snell, p. 473; Aids to Equity, p. 122; and in books on Married Women's Property Act, 1882, s. 1.)

In 1878 *A. married B. At that time B. held the lease of a public-house. After the marriage her maiden name over the door was painted out and A.'s name inserted. B. retained an active supervision and control over the business until A.'s death* (*intestate*) *in* 1883. *In connection with the business a banking account was opened, and with the balance from time to time investments were made. Are these investments the separate property of B. under sect.* 1 *of the Married Women's Property Act,* 1882?

Stone, Re, Stone v. Stone.

The Court of Appeal said that the investments belonged to A.'s estate. Section 1 of the Married Women's Property Act could not be held to apply, as B. had not carried on business "separately from her husband" within the meaning of that Act.

(Enter as a note to sect. 1 in books on the Married Women's Property Act, 1882.)

Can the Chancery Division appoint a guardian to a child of a British subject when the child is resident abroad, and has no property here?

Willoughby, In re.

(W. N. 105; S. J. 470; L. J. 101; L. T. 42.)

Such a child, even though, as in the above case, the father (being a British subject) was born and resided permanently in France, is subject to the laws of this country as if born here; and therefore Kay, J., decided that a guardian could be appointed. (See *Hope* v. *Hope*, 2 W. R. 698.) Generally, however, the Court would decline to entertain jurisdiction when there is no property here, for any order made might be mere *brutum fulmen* and unenforceable; but in this case, notwithstanding the absence of property here, the judge thought fit to direct the appointment of a guardian to be proceeded with, since the French Courts had refused to proceed with the appointment in that country of a guardian until the present matter pending here had been settled. It will be observed that not only was the child in question born abroad, but the child's father also; but as the father was son of a British subject, the child was entitled to the protection of our Court. (See *De Geer* v. *Stone*, 31 W. R. 241; L. R., 22 Ch. D. 243.)

(4 Fisher, p. 467; Snell, p. 415; Aids to Equity, p. 108.)

If a solicitor employs an auctioneer at a paid fee for conducting the actual sale in the auction room, and also employs a surveyor, to whom the taxing master allows remuneration, for preparing plans and dividing the property into lots, surveying the property for particulars of sale, &c., is the solicitor entitled to the scale fee for conducting the sale of the property by public auction under Part I. of Schedule I. of the Solicitors' Remuneration Order?

Wilson, In re.

(S. J. 438.)

The solicitor, in such a case, is not entitled to the "conduct" remuneration fee, since he has not altogether conducted the sale, the surveyor having done much of what properly constitutes the conduct of a sale. Whether the employment of an auctioneer merely to conduct the sale in the auction room would prevent the conduct fee being charged, was a question more difficult to answer looking to clause 4 of the order, which provides that the remuneration prescribed by schedule I. to the order is not to include auctioneer's or valuer's charges. But that question, the Court of Appeal said, need not be decided in the present case, as the fact that a surveyor had been employed to do work which the solicitor ought to have done in "conducting the sale," prevented the solicitor being entitled to the fee.

III.—PRACTICE CASES.

[The references under Fisher, Snow, Stoney and Student's Practice, are respectively made to the last editions of Fisher's Digest, Snow and Winstanley's Annual Practice, Stoney and Andrews' Judicature Practice, and Gibson and McLean's Student's Practice. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

Will the Court compel a plaintiff who, though permanently resident abroad, is temporarily resident here at the time of suing?

Colledge v. Armstrong and Another.

(T. 481.)

No, decided the Court of Appeal on the authority of *Redondo* v. *Chaytor*, L. R., 14 Q. B. D. 454; and *Erard* v. *Garner*, L. R., 28 Ch. D. 232.

(Snow, p. 671; Stoney, p. 479; Gibson, p. 97; Order LXV.)

Can a plaintiff, who is suing as heir-at-law of a deceased person to recover landed estates, interrogate the defendant with the view of supporting his own title?

Cromwell v. Swail.

(T. 474.)

The Court of Appeal decided that in the exercise of its discretion under Order XXXI. it would not compel the defendant to answer such interrogatories until after the plaintiff had proved his heirship. Compare *Kennedy* v. *Lyell*, L. R., App. Cases, 217.

(Snow, p. 255; Stoney, p. 258; Gibson, p. 162; Order XXXI. r. 7.)

Will the Court allow a set-off for damages or costs between parties to prejudice a solicitor's lien for his costs?

Edwards v. Hope.

(W. N. 95; S. J. 456.)

By Ord. LXV. r. 14, a set off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. But the rule only applies to damages and costs in the action in which the set-off was sought, and not to damages and costs in separate and distinct actions. Consequently, in the above case, the set-off was only allowed so far as it did not interfere with the solicitor's lien. The facts were these:—A. brought an action against B. for a debt which was not yet due. B. obtained judgment for his costs, which were taxed at 48*l.* odd. A. subsequently, and before he had paid the 48*l.* costs, after the debt had accrued due, brought another action against B., and obtained judgment for the debt and costs, amounting in all to 70*l.* B. wished to issue execution on his judgment for the 48*l.*, but A. applied for an order staying execution, insisting that he had a right to set-off the 70*l.* against B.'s claim. The master stayed execution. Smith, J., in chambers, varied the order by allowing A. to set off the costs only, so that B. was at liberty to issue execution for the balance of 48*l.* The Divisional Court affirmed the decision, and the Court of Appeal in its turn affirmed the decision of the Divisional Court. The Courts are bound to take notice of a solicitor's lien for costs in a cross action.

(6 Fisher, p. 1947; Snow, p. 676; Stoney, p. 485; Ord. LXV. r. 14.)

Can a garnishee order be obtained attaching a debt for which a cheque has been given, but which has not been presented when the order is asked for?

Elwell v. Jackson.

(T. 454.)

In other words, does the debt still exist after the cheque in payment has been given and accepted, or does the handing over of the cheque operate as payment? Brett, M. R., said (Baggallay and Bowen, L.JJ., concurring) that the debt no longer existed in such a case, and consequently there could be no garnishee order. After the acceptance of a cheque the debt was paid subject only to its being revived in the event of the cheque being dishonoured. This is clear from the judgments in *Belshaw* v. *Bush* (11 C. B. 191), and *Currie* v. *Misa* (L. R., 10 Ex. 153).

(Snow, p. 513; Stoney, p. 362; Student's Practice, p. 240; Order XLV.)

When husband and wife make an affidavit of documents, the wife being entitled to the property, the subject of the action, for her separate use, may the affidavit be as to joint possession, or must it show clearly what documents either the husband or the wife have or have had in their possession?

Fennell v. O'Connell.

(W. N. 109; S. J. 484; L. J. 101.)

The affidavit must not be as to joint possession, but must show what documents the husband and wife or either of them have or has, or have or has had, in their possession relating to the action. If an affidavit as to joint possession were held sufficient, the husband would be able to keep back any documents with which the wife had nothing to do, and the wife would be able to keep back documents relating to her separate estate.

(Snow, p. 369; Stoney, p. 264; Gibson, p. 163; Ord. XXXI. r. 12.)

If the registrar strike an action out of the cause book under Ord. XVII. r. 10, can the plaintiff re-enter the cause without giving a fresh notice of trial?

Le Blond v. Curtis.

(W. N. 99; S. J. 455; L. J. 94; L. T. 24.)

He cannot do so, decided Chitty, J. It was also laid down by the learned judge that the registrar could of his own motion and without any application strike out a cause, under Ord. XVII. r. 10, which had been standing for one year in the cause book marked as abated or as standing over generally.

(Snow, p. 257; Stoney, p. 184; Student's Practice, p. 73; Order XVII. r. 10.)

If a special case is stated by justices for the decision of the Divisional Court, from what day do the twenty-one days for appealing from the judgment of that Court run?

Lightbound v. Higher Bebington Local Board.

As the practice is to enter the order in the Crown Office book on the day on which judgment is given in Court, the time runs from that day, and not from the day on which the formal order was drawn up by the officer of the Court.

(Snow, p. 620; Stoney, p. 444; Student's Practice, p. 371; Ord. LVIII. r. 15.)

If judgment is obtained against a married woman, and she has separate estate with restraint on anticipation, will the Court under the Debtors Act make an order that she pay the judgment debt out of the income of the property when the same is paid to her?

Meager v. Bellew.

(W. N. 82; S. J. 420; L. J. 83.)

The Court of Appeal were unanimous in deciding that no such order could be made in the above case, as it did not appear that any income had come into the woman's hands since the judgment, and the Court doubted whether, even if it had been shown that income had been paid to her, an order would be made directing her out of such income to pay the debt.

(Snow, p. 486; Stoney, p. 359.)

If A. and B. have given a joint and several promissory note to C., and C. receives from A. a sum smaller than the full amount of the note but larger than A.'s share thereof, and discharges him from any further payment, is B.'s liability on the note discharged also?

Stevens v. Hughes.

(T. 415.)

If the inference to be gathered is that C. meant to treat the debt as satisfied when he accepted the amount from A., then Brett, M. R., said that C. could not sue B.; but if C.'s conduct was such as to show that he did not intend to treat the debt as wholly satisfied, he could sue B. for the balance.

Waller v. Brown.

(S. J. 435.)

In this case, Chitty, J., stated that when undertakings were given at the hearing, they must be given by the parties themselves if they appear in person, and if they are represented, then by their counsel. Undertakings given by the solicitors of the parties were not binding.

If a plaintiff shows that a material witness who had been subpœnaed failed to appear at the trial, can the Court order a new trial, and if so, ought the Court to order the security for the costs of the former and abortive trial to be paid into Court?

Weldon v. Neal.

(T. 457; W. N. 92; L. J. 88.)

Mrs. Weldon succeeded in obtaining an order for a new trial on the above ground from the Divisional Court, but only upon condition that the costs of the abortive trial be paid by her in any event, and that she bring 100*l.* into Court as a security for these costs within a fortnight. Mrs. Weldon appealed, and the Court of Appeal, while upholding the justice of the order which directed Mrs. Weldon to pay the costs of the trial in any event, since she had brought the result on herself by not seeking respectable legal advice, held that that part of the judgment which directed her to pay 100*l.* into Court was most unusual and must be set aside. Brett, M. R., expressed a wish that he could say something to prevent "this unfortunate person" (Mrs. Weldon) "from bringing such a multitude of actions."

(Snow, p. 472; Stoney, p. 336; Student's Practice, p. 216; Ord. XXXIX. r. 3.)

IV.—BANKRUPTCY CASES.

[The references under Fisher, Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Fisher's Digest, Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

Can a County Court when exercising bankruptcy jurisdiction restrain an action going on in the High Court against the trustee of the bankrupt concerning the property of the latter?

Barnett, In re, Reynolds, Ex parte.

(W. N. 94; S. J. 437.)

A County Court has no longer this power, for sect. 100 of the Bankruptcy Act, 1883, gives to County Courts merely "all the powers and jurisdiction of the High Court;" and owing to sect. 24 of the Judicature Act, 1873, neither of the Divisions of the High Court has any power to restrain by injunction the proceedings in an action in another Division. Consequently, a County Court sitting in bankruptcy has no such power; and so our question was answered by the Court of Appeal in the negative.

Sect. 102 of the Act of 1883, like sect. 72 of the Act of 1869, merely defines the subject matter to which the jurisdiction of the Bankruptcy Courts extends, and the power of restraining actions was not governed by that section, but by sect. 100. This decision, however, only applies to cases falling within sect. 102 of the Act of 1883, and not to cases falling within sect. 10, sub-sect. 2, under which any Court exercising bankruptcy jurisdiction may, after the presentation of a bankruptcy petition, stay actions and other legal processes *against the property or person of the debtor;* and such actions, although pending in the High Court, may be restrained by a County Court.

(Robson, p. 352; Y.-Lee, p. 513; Williams, p. 299; Baldwin, p. 16; Ringwood, p. 9.)

Can a Court of bankruptcy order a witness to be examined for the discovery of property of a bankrupt whose estate is being administered under sect. 125 of the Bankruptcy Act, 1883?

Hewitt, In re, Hewitt, Ex parte.

(W. N. 114; S. J. 485.)

It cannot, the Divisional Court decided on appeal from the County Court, for rule 58 of the Bankruptcy Rules gave no power—sect. 27 of the Bankruptcy Act did not apply when the estate was being administered under sect. 125, and the power conferred by the Judicature Acts and Rules had no application, since to bring the judicature powers of examining witnesses into operation there must be some litigation going on.

Robson, p. 646; Williams, p. 353; Baldwin, p. 241; Ringwood, pp. 74, 169; sects. 27, 125, and rule 58.)

To whom must notice of a bankruptcy petition being presented against an execution debtor be given under sub-sect. 2 of sect. 46 of the Bankruptcy Act, 1883?

Holland, Re, Warren, Ex parte.

(W. N. 89; S. J. 437.)

This section points out the duties of a *sheriff* who has sold goods under a writ of execution for more than 20*l.*, in the event of notice being

served upon *him* (the sheriff) of a bankruptcy petition being presented against the execution debtor. Must the notice be given to the sheriff himself, or may it be given to the man in possession, or to some third person? By sect. 168, the term "sheriff" includes "any officer charged with the execution of a writ or other process." And in construing the two sections together, the Court of Appeal, held that, to constitute the notice sufficient, it must be given to the sheriff himself, or to some recognized agent of his for the purpose of receiving such notices, to the undersheriff, or care of the clerks at the sheriff's office. Notice to a bailiff or a man in possession was not sufficient. And putting this construction upon the sections, the Court held that the notice given under the following circumstance was not sufficient, and therefore that the execution creditor in the Mayor's Court was entitled to the proceeds of the execution:—A. obtained judgment and issued execution against B. in the Mayor's Court. A warrant was lodged with the serjeant-at-mace of that Court, directing him to levy 104*l.* on the goods of B. The serjeant found an officer of the sheriff already in possession of B.'s goods under a Queen's Bench writ of execution, and to him he handed the Mayor's Court process for execution. The sheriff's officer sold under both writs, and handed 104*l.* to the serjeant-at-mace. The sale took place on the 29th October; and the 104*l.* was handed over on the 30th October. A notice of a bankruptcy petition against B. was served on the sheriff's officer on the 31st October; and B. was subsequently adjudicated a bankrupt. The notice of the proceedings was not communicated to the serjeant-at-mace, and he handed over the 104*l.* to A. The trustee in bankruptcy claimed this 104*l.* paid, on the ground that notice of the proceedings in bankruptcy had been given to the "sheriff" within the fourteen days referred to in sect. 46 (sub-sect. 2); and, consequently, that the money ought not to have been handed over to A. The Court of Appeal considered that the notice ought to have been given to the serjeant-at-mace, or to his recognized officer for receiving notices. The sheriff's officer was the agent of the serjeant-at-mace only to conduct the sale for him, and hand him over the proceeds; and the notice given to him could not be regarded as notice to the sheriff under sub-sect. 2 of sect. 46. Consequently A. was entitled to the 104*l.* as against B.'s trustee.

(Robson, p. 376; Y.-Lee, p. 412; Williams, p. 222; Baldwin, p. 63; Ringwood, p. 34.)

Can a general power of appointment given by a marriage settlement be exercised by the trustee in bankruptcy of the donee of the power?

Nichols, In re, Nixon v. Coleclough.

(W. N. 112; S. J. 485; L. J. 104.)

Under sect. 15 of the Bankruptcy Act, 1869, and now under sect. 44 of the Bankruptcy Act, 1883, such a power might be exercised by the trustee. But, in the above case, where property was settled on A. for life, then on B., his wife, for life, and then for children of A. and B., and in default of issue, as A. should appoint by deed or will, and in default for X., A. went into liquidation and then died without leaving any issue, and without having exercised the power, and leaving B. him surviving, Pearson, J., decided that A.'s trustee could not exercise the power.

(Robson, p. 496; Y.-Lee, p. 265; Williams, p. 165; Baldwin, p. 149; Ringwood, p. 115; sect. 44.)

Is a commitment order under the Debtors Act a process of contempt or a means of enforcing payment of the debt?

Ryley, In re, Steward, Ex parte.

(T. 468; W. N. 113; S. J. 471; L. J. 100; L. T. 43.)

Cave, J., had no hesitation in deciding that it was merely a means of enforcing payment of a debt, and therefore money paid under such an order by a debtor, after a receiving order had been made against him, must be repaid to the trustee. The facts in the above case were curious, and as follows:—Prior to 12th February, a commitment order against A. for non-payment of a debt due to B., had been made by the Mayor's Court. On 12th February, a receiving order was made against A., and, subsequently, an administration order under sect. 121 of the Bankruptcy Act was made. A. was on his way to the official receiver's office, taking with him 4*l.*, representing a salary received by him, and which the receiver had ordered to be brought him, when the serjeant-at-mace of the Mayor's Court arrested him, and only released him on his paying the amount of the debt, 2*l.* 8*s.* 8*d.* The money was paid by A. under protest and after an explanation of his (A.'s) position, and Cave, J., decided that the money must be handed over to the official receiver.

(Robson, p. 835; Yate-Lee, p. 522; Williams, p. 309; Baldwin, p. 255; Ringwood, p. 138.)

Has an official receiver power, after the receiving order is made and before a trustee is appointed, to sell the property of the bankrupt?

Parkers, Re, Turquand, Ex parte.

(T. 464; W. N. 103; S. J. 470; L. J. 98; L. T. 42.)

It will be remembered that Cave, J., decided that, looking to the words of sect. 70 of the Bankruptcy Act, 1883, the official receiver could not sell the property, and if he did so, even though the sale was adopted subsequently by the trustee, he was not entitled to the commission allowed by Table D., of 6 per cent. on the proceeds. Cave, J., refused to say whether the sale might be made by the direction of the Board of Trade (see *ante*, p. 42). The Court of Appeal unanimously reversed the decision of Cave, J.; and consequently the question we have set out is answered in the affirmative. Brett, M. R., said that after a careful examination of all the provisions of the Act, sects. 54 and 56 were plain and simple, and gave the official receiver, when he became trustee on the adjudication, power to sell the property of the bankrupt, and there was nothing equally plain in the rest of the Act to show that he was not to have that power; while Baggallay, L. J., said that the provisions of sect. 70, which were relied upon by Cave, J., dealt only with the powers of the official receiver while he was acting as receiver, and had no relation to his powers when he was acting as trustee, and he clearly was trustee of the estate after the adjudication, and until the appointment of a trustee by the creditors.

(Robson, p. 423; Y.-Lee, pp. 451, 490; Williams, 40; Baldwin, pp. 69, 76; Ringwood, pp. 42, 121; Sects. 54, 56, 70.)

Can a registrar in bankruptcy refuse to allow a solicitor acting for a creditor to question the debtor under sect. 17, sub-sect. 4 of the Bankruptcy Act, unless he produces his authority in writing to act for the creditor?

Reg. v. The Registrar of the Greenwich County Court.

(W. N. 103; S. J. 471; L. T. 41.)

Most certainly he can, decided the Court of Appeal. The solicitor is "a representative" within the meaning of sect. 17, and so can only act for the creditor if authorized in writing, and he must be prepared, if called upon, to do so to produce his authority. A barrister, however, was not the representative of the creditor, and therefore could act for the creditor without any written authority; the client is not the master of the counsel, and therefore counsel cannot be said to be his "representative." The Master of the Rolls could not see that any indignity was cast upon the solicitor by his being asked whether he has the authority without which he could not act.

(Robson, p. 690; Y.-Lee, p. 95; Williams, p. 54; Baldwin, p. 84; Ringwood, p. 46; Sect. 17.)

When application to approve a composition or scheme is made to the Court under sect. 18, sub-sect. 6, is the report of the official receiver showing ground for the Court's refusal to approve primâ facie evidence, so that the Court can refuse approbation of the scheme without having the facts proved by other evidence?

Wallace, In re, Campbell, Ex parte.

(W. N. 103; L. J. 98.)

It is, decided the Court of Appeal. Brett, M. R., said that for the purpose of sect. 28, sub-sect. 4, the report of the official receiver was made *primâ facie* evidence of the truth of the statements therein contained; and his Lordship was of opinion that whatever proof of the facts referred to in sect. 28 would be sufficient, would also be sufficient proof under sect. 16.

(Robson, p. 807; Y.-Lee, p. 98; Williams, p. 56; Baldwin, p. 337; Ringwood, p. 48; Sect. 18.)

V.—CRIMINAL CASES.

[The references under Harris, Stephen, Harrison, and Stone are respectively made to the last editions of Harris' Criminal Law, Stephen's Digest of the Law of Crimes, Harrison's Guide to Crimes, and Stone's Justices Manual.]

If an infant hires goods and then fraudulently sells them, can he be convicted of larceny under 24 & 25 Vict. c. 96, s. 3?

Regina v. McDonald.

(W. N. 106; L. T. 44.)

An infant hired furniture, fraudulently removed, and then sold, it. He was indicted for larceny and convicted, but the point of law, whether, as an infant cannot contract, he can be guilty of a fraudulent conversion of goods hired by him, was reserved for the Court for Crown Cases Reserved to decide. That Court decided that an infant could be guilty of larceny in connection with a

bailment made to him; and so our question is answered in the affirmative.

(2 Fisher, p. 1607; Harris, p. 212; Harrison, p. 67; Stephen, p. 229.)

VI.—PROBATE, DIVORCE & ADMIRALTY CASES.

[The references under Dixon, Coote, Dixon's Div., Browne, Roscoe, Smith's Ad., Smith's Ecc. and Harrison are respectively made to the last editions of Dixon's Probate, Coote's Probate, Dixon's Divorce, Browne's Divorce, Roscoe's Admiralty, Smith's Admiralty, Smith's Ecclesiastical Law and Harrison's Probate and Divorce.]

What is meant by the expression "ready to load" in a charter-party?

Groves, McLean & Co. v. Volliart Brothers.

(T. 454.)

It signifies, said Brett, M. R., that the ship must be empty, so as to be ready for the whole cargo to be put on board, *i.e.*, the vessel must be discharged in all her holds, so as to give the charterer complete control of every portion of the ship available for cargo, and, if the vessel is only partially ready, the charterer could take advantage of a clause in the charter-party allowing him to cancel the contract in the event of the ship not being "ready to load" at the time agreed upon.

(6 Fisher, p. 1332; Newson, p. 51.)

Is it a contempt of Court to remove a vessel after notice by telegram that a warrant of arrest has been issued against the vessel?

The Seraglio.

(T. 446.)

The proper way of serving a warrant of arrest is, as our readers know, by affixing the original warrant for a short time on the mast, and on taking off the process leaving a true copy of it affixed in its place. And the question Hannen, J., had to decide in the above case was, whether a ship could be detained under a telegram that a warrant had been issued, pending the arrival of the warrant itself. He decided that this could most certainly be done; and he held that the owner of the ship in question had, by taking the vessel out of port after the Custom House officer had, in pursuance of a telegram that a warrant was issued, arrested the ship, committed a contempt of Court.

(6 Fisher, p. 1738; E. Smith's Admiralty, p. 122.)

No. V.

MR. FURNIVAL TEMPLE'S LETTERS TO HIS NEPHEW.

Clifford's Inn Fields,

My dear Frank,

Again you take me to task, and, I must admit, with some show of justice. I have been, as you irreverently term, "dodging" my share of the contract. I am bound to confess that my letters to you on legal subjects have not been very full or explanatory. You complain that my explanations and dissertations on the curious cases of *Read* v. *Anderson* and *Snow* v. *Hill* were "just not on the point at all." Well, you may be right; no doubt the fact that Mr. Justice Hawkins's decision was approved by the Court of Appeal is considerably in favour of you; but, my dear boy, I am getting an old man and consider myself privileged to think that even a Court of Appeal may err. While on this subject, my dear Frank, let me point out to you that to exult too much when an opponent in argument is demonstrated to have entertained an erroneous opinion on the subject of the debate is not in good taste: my views on *Read* v. *Anderson* were proved to be erroneous according to the Court of Appeal, and your opinion—the idea of you having an opinion at all; ah! I forgot this was a sporting point—was proved correct: let us, therefore, drop the subject.

Now to the matter of your letter—I do wish your caligraphy was at least intelligible. So you noticed the case of *Farrer* v. *Nelson* in the paper the other day. My dear boy, in all seriousness let me ask, do you ever feel any inquiring spirit as to the correctness of any decision which does not involve either a gaming, betting, shooting or agricultural point? If you do, you certainly do not appeal to me for assistance. Stay, in imagination I see that grin and that ready but rude reply hovering on the tip of your tongue, "that it would not be much good, uncle, asking you a question on any other point of law." But how I wander from my subject! truly I must be getting a bit old. Do I think the decision in *Farrer* v. *Nelson* correct? Most certainly I do, sir. And I, Tory as I am, feel shocked at the ultra-Toryism displayed in your letter. But first to recapitulate the facts.

The action briefly was for damages for injury done by the defendant overstocking his farm with game: the plaintiff was a farmer, and the defen-

dants, certain, doubtless wealthy, merchants of Liverpool, were the sporting tenants of a certain estate, the plaintiff's farm being situate on this same estate. The sporting tenants, considering that certain portions of their estate were overstocked, transferred some 1,500 pheasants to different coppices; 400 of these pheasants were placed in a coppice situate in the middle of the plaintiff's farm, but which was not included in his holding. In consequence of this action on the part of the sporting tenants, plaintiff's crops were damaged, and for this damage he sued and recovered in the County Court, the decision of which Court has just been upheld by the Divisional Court.

Now, my boy, having got our facts in proper and historical sequence, we will proceed to discuss the question; with this object I propose to take each of your agreements *seriatim*. I would merely premise that you have in this case allowed your feelings as a sportsman to overcome the reasoning of your legal training. No doubt, my dear Frank, it is very irritating that a man cannot preserve on his own land as many pheasants as he chooses, but remember you should be a lawyer first, and sportsman after. Do not permit your legal reasoning to be obscured by your love of sport.

May not, you indignantly demand, I do that which pleaseth me with mine own? The answer is simple. You may, only if you do it in such a manner as to be a nuisance to your neighbour, the law, my dear boy, will make you pay damages. The sporting tenant may stock the estate with as much game as he chooses, but he must be careful not to overstock, for if he does so, he will be liable to pay damages. Every man, as Mr. Baron Pollock said, has the right to keep and breed on his land such game as can be *properly* bred and kept there; the law might be, nay is, peculiar to this country. But then, Frank, remember that although a man may possess a legal right, that legal right may be converted into a wrong, if it is wrongfully exercised. As an illustration take the law as to self-defence: you possess the right to use force even to protect yourself from attack; thus, if a loafer attacked you on a highway, you would be justified in giving him, as you would, "one in the eye, straight from the shoulder," but you would not be justified in half-murdering the wretched man.

You lay great stress on the fact that the coppice to which the pheasants were transferred was excepted from the farmer's holding: but what has that to do with it? Absolutely nothing: if the coppice had only bordered on the farm, the defendants would still have been legally liable for damage by their improper overstocking—yes, my boy, even if the coppice had been on the border of their land.

Now for your last and, as you evidently think, strongest point. The cases show—the idea of you telling me what the cases show, and who, pray, told you there were any cases on the point at all?—that a natural increase in the game by breeding is not overstocking. Nonsense, my boy, nonsense. That was merely a suggestion of one of the judges. I do not mean that his Lordship's suggestion was nonsense; my rude phraseology was provoked by your daring to tell me about cases. It is a rule of law that you must "sic utere tuo ut alienum non lædas," which for your benefit, as no doubt your head being now full of sporting matters has no room for the slight classical knowledge you did once possess, I will translate as meaning in homely phraseology—so manage yourself and your property, that you don't become a nuisance to your neighbours—remember that, especially when out with that brute of a bull dog of yours.

To your final inquiry what the—but there, my boy, I forgive you—what are the rights of a sporting tenant, there is a complete answer. He can only exercise the same rights as the owner would have possessed; he must exercise those rights so as not to injure the farmers; he must keep down the game; he must not go stamping over crops in a reckless manner: in short, my dear Frank, he must comport himself as all true sportsmen do, as a gentleman: ever mindful, whilst taking his enjoyment, of the interests of others; this he should do, even in his own interests, if he but remember how his enjoyment is dependent on the goodwill of others. Such cases as this, as *Paul* v. *Summerhays*, and others, make me fear for the future of British sport, for, Tory as I am, I do not believe that farmers take these extreme measures against the sporting tenants, as a rule, till driven to desperation. I know your opinion on this point will be opposed to mine—but we are drifting away from law.

You will ask what authorities do I base my statements on. None, my boy, are needed; the maxim "sic utere tuo" is all-sufficient. If you want more, go, turn up *Paget* v. *Birkbeck* in 1 Beavan, and remember this, that if ever I live

to see you drift into any such action as this, I'll cut you off with a shilling, hang me if I don't. Your aunt, my boy, is writing you by the same post. Give best remembrances to all at Hazeldean Farm, even that brute of a bull pup, as he gave me one on my last visit.

Your affectionate uncle,

FURNIVAL TEMPLE.

AT WHAT TIME DOES THE PROPERTY PASS ON THE SALE OF GOODS?

(*Continued from p.* 140.)

As to the Sale of Goods not Specific.

Under this head we class cases of purchases of goods generally where the purchaser contracts to buy goods of a certain character or kind, but the particular goods which are to be the subject of the contract are not specifically earmarked by the parties at the time of the contract. Thus, if A. contracts to buy from B. so many tons of coal or so many tuns of oil, &c., the contract here is to purchase goods which are not specific. The rule with regard to contracts of this kind is that no property passes in the goods by the mere contract to buy, and not until they are specifically identified and appropriated to the contract.

What, then, amounts to appropriation? The vendor may select the goods and put them aside to be delivered to the purchaser. Will this amount to appropriation so as to pass the property? In the absence of anything to the contrary in the contract of sale it will not have that effect, and the vendor will be at liberty to change his mind, and to sell the goods so set apart to someone else. There must be something more than the mere selection of the goods to amount to appropriation; something affording evidence that the selection has been made in sole pursuance of the contract, and with the intention of abandoning the ownership of the goods selected, and dedicating them thenceforth to the purchaser. It thus depends greatly on the terms of the contract what shall amount to appropriation, and a rule is thus stated by Mr. Campbell, in his treatise on the sale of goods:—"An act of one party, showing however clearly his intention to appropriate specific goods, but not being in performance of a term of the contract, is inconclusive and revocable, unless there is the actual assent of the other party. But if the other party is, by the terms of the contract, to despatch the goods, or do anything to them that cannot be done till the goods are appropriated, the property will pass as soon as the despatch or other act has commenced; but till that act has actually commenced the appropriation is not final, not being made by the authority of the other party or binding on him."

The two leading cases on this point are *Fragano* v. *Long*, 4 B. & C. 219, and *Atkinson* v. *Bell*, 8 B. & C. 277.

In the former A. sent an order to B. for goods, to be despatched on an insurance thereof being effected, the terms to be three months' credit from the time of arrival. The goods were selected and sent to B.'s agent for shipment to A., and were insured in A.'s name. They were then damaged by the carrier, and an action was brought by A. against him. The carrier contended that A. was not the proper person to bring it, as the property in the goods had not passed to him. But the Court held that the property had passed to the plaintiff from the time they left B.'s warehouse. Other cases you may consult on this point are *Aldridge* v. *Johnston*, 26 L. J., Q. B. 296, and *Langton* v. *Higgins*, 28 L. J., Ex. 252.

In *Atkinson* v. *Bell* (which has been designated a very strong case), A. had ordered from B. certain machines, and they had been made and packed under his agent's superintendence and the packing boxes made ready to be sent, and B. had written to A. to ask by what conveyance they were to be sent, but had received no answer. B. then became bankrupt, and his trustee brought an action against A. who refused to take the goods, for "goods sold and delivered." But it was held that he was not entitled to bring the action in this form as the property in the machines had not passed to A. What B. had done had not been done in pursuance of any term of the contract, and though he had intended the goods for A., as A. had not assented to the appropriation no property had passed, and B. had power to revoke his intention and might have sold them to any one else.

Thus it is evident that if there be a mere appropriation, and this is made voluntarily by the vendor, the property does not pass until the appropriation has been assented to by the purchaser. But if it is followed by any further act done in pursuance of the contract of sale, it is presumed that it has been made with the authority of the purchaser, and the property passes as soon as that subsequent act is done.

But a voluntary appropriation by the vendor may afterwards be assented to by the purchaser, and the property will pass upon such assent being given. Thus in *Sparke* v. *Montriou* (2 Bing., N. C. 761), B. sold S. goods to be shipped by J., and wrote to S. that he was advised that J. had engaged room in a ship for them. S. then instructed his agent to insure the goods in his name by that ship, which was done. The ship was lost at sea, and S. brought an action on the policy of assurance. The underwriters contended that S. had no insurable interest, but the Court held that the property passed to S. as he had assented to the appropriation by B. See also *Rhode* v. *Thwaites*, 6 B. & C. 388.

The principles above given as to appropriation only apply when the contract is silent on the point as to what is the intention of the parties as to the time when the property in the goods shall pass. If by the contract the vendor has conferred on him the choice of appropriating the property it will not pass, if his acts show clearly his purpose to retain the ownership, notwithstanding that he has made an appropriation. This purpose may be deduced from acts which show that he intended to reserve to himself a *jus disponendi*, or right to retain the goods and dispose of them to some other person, notwithstanding he has appropriated them to the purchaser. Thus, A., residing in New York, may order goods from B.; B., to secure himself against the event of A.'s becoming bankrupt or his refusal to pay for the goods on receiving them, may take a bill of lading making the goods deliverable to the order of his agent in New York and send it to his agent, instructing him not to transfer it to A. until he has been paid; or B. may draw a bill on A. for the price of the goods and sell it to a banker in England, depositing with him at the same time the bill of lading to be delivered to A. on payment of the bill. Here B.'s intention, as appearing from these acts, is clearly that the property shall not pass to A. till payment is made, and accordingly it will not pass till then (see *Whalley* v. *Montgomery*, 3 East; *Craven* v. *Rider*, 6 Taunt. 433; *Brandt* v. *Bowlby*, 2 B. & A. 932; *Waite* v. *Baker*, L. R., 2 Ex. 1; *Sheppard* v. *Hanson*, L. R., 5 H. L. 116; *Ogg* v. *Shuter*, L. R., 1 C. P. D. 47; *Miritaba* v. *Imperial Ottoman Bank*, L. R., 3 Ex. D. 164).

Where goods are delivered to a common carrier he is the agent for the vendee, and the property will pass on the delivery to him. But where the goods are put on board a vessel and the bill of lading taken, the delivery does not amount to a delivery to the purchaser but to the captain, as agent for the person indicated in the bill, as the person for whom they are to be carried (see *Sheppard* v. *Harrison*, *supra*). This will especially be the case when the bill is deliverable to the order of the vendor, though the presumption that the vendor thereby intended to retain the property in the goods may be rebutted.

The point to which we have devoted these few remarks often becomes a very knotty one, and for further information the reader is referred to the treatises of Benjamin and Campbell on the sale of goods.

BANKRUPTCY.

By Robt. McLean, Esq., Solicitor.

XV.

Small Bankruptcies.

With the laudable object of enabling small estates to be wound up in bankruptcy at the least possible cost, the Act of 1883 makes special provisions as to small bankruptcies, which, while leaving the general law and procedure in bankruptcy still applicable, yet modifies them in such a way as to avoid, as far as may be, all unnecessary expenses. The provisions of the Act on the point are contained in sect. 121, as supplemented by Rule 199. Sect. 121 provides, when a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value *three hundred pounds*, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:—

(1) If the debtor is adjudged a bankrupt *the official receiver shall be the trustee* in the bankruptcy:

(2) *There shall be no committee of inspection*, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection:

(3) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of

the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and *thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.*

It will be seen that the creditors have the power to determine that these provisions shall not apply, but may require the estate to be administered in the ordinary way. The rules referred to in subsect. (3) modify the ordinary proceedings in the following particulars:—(1) Advertisements in local papers are dispensed with. (2) No jury is obtainable in contentious matters. (3) The debtor may forthwith be adjudged bankrupt if the receiver satisfies the Court: (a) that the debtor has absconded; (b) or does not intend to propose a composition or scheme; or (c) that, if he has proposed one, the same is not reasonable or beneficial to the creditors; or if (d) at the public examination of the debtor the Court thinks a composition or scheme ought not to be sanctioned by reason of the debtor's conduct. (4) No appeals lie from orders of the Court except by leave. (5) All payments to be made to the Bank of England, unless the Board of Trade otherwise orders. (6) Only one meeting of creditors necessary to confirm a composition or scheme, and this meeting may be held on the day of the public examination. (7) The estate to be realized with all reasonable despatch, and when practicable to be distributed in a single dividend.

We have already discussed sect. 122, which provides for the administration of the estate of a judgment debtor whose whole indebtedness does not exceed 50*l.* (Law Notes, Vol. III. p. 362.) Since that time Rule 267 has added another case in which such an administration order may be made in lieu of the usual receiving order. This is where an application to commit is made to a County Court, and it appears to the Court that the total liabilities of the debtor do not exceed 50*l.*, the Court, instead of committing the debtor, may make an administration order under sect. 122. A set of Rules for procedure under sect. 122 has been promulgated, but they are of too great a length, and relate too purely to practical details to be more than merely alluded to here.

Courts having Bankruptcy Jurisdiction.

We will now, as briefly as possible, consider the constitution and powers of the Court. Sect. 92 declares that the Courts having jurisdiction in bankruptcy shall be the High Court and the County Courts; but the Lord Chancellor is empowered to exclude any County Court and attach its district for bankruptcy purposes to the High Court or any other County Court. The London Bankruptcy Court is to form a part of the Supreme Court of Judicature (sect. 93), and its jurisdiction is transferred to the Queen's Bench Division (Order of 1st January, 1884; sect. 94), and bankruptcy matters have been assigned to Mr. Justice Cave (Order of 1st January, 1884). Powers of transfer are conferred by sect. 97, and a transfer of proceedings may be made from one Court to another, either with or without application by the parties to them. The judge of the High Court may exercise in chambers the whole or any part of his jurisdiction, subject to the provisions of the Act and the General Rules. General Rule 5 requires the following matters to be heard in open Court.

(a) The public examination of debtors;
(b) Applications to approve a composition or scheme of arrangement;
(c) Applications for orders of discharge or certificates of removal of disqualifications;
(d) Appeals from the Board of Trade to the High Court;
(e) Applications to set aside or avoid any settlement, conveyance, transfer, security, or payment, or to declare for or against the title of the trustees to any property adversely claimed;
(f) Applications for the committal of any person to prison for contempt;
(g) Appeals against the rejection of a proof, or applications to expunge or reduce a proof, where the amount of the proof exceeds 200*l.*
(h) Applications for the trials of issues of fact with a jury, and the trial of such issues.

We will conclude these papers with a few words on

MISCELLANEOUS POINTS.

1. *Appeals.*—By sect. 104 (as altered by the Bankruptcy Appeals Act, 1884—*vide* Law Notes, Vol. III. p. 201), all orders made in bankruptcy matters may be appealed from as follows:—

(a) From a County Court an appeal lies to a Divisional Court of the High Court. The Divisional Court's decision is final, unless leave for further appeal is given to the Court of Appeal. Such leave may be obtained either from the Divisional Court or the Court of Appeal, but application must first be made

to the Divisional Court. (See *Re Nicholls*, 3 Law Notes, p. 363.) The decision of the Court of Appeal is final.

(b) From an order of the High Court an appeal lies to the Court of Appeal.

(c) From the Court of Appeal an appeal lies *by leave* to the House of Lords.

By Rule 111 orders made by consent, or as to costs only, cannot be appealed from to the Court of Appeal except by leave: nor can an appeal be made to that Court except by leave from any order in or matter involving 50*l.* only or under.

And the exercise of a discretionary power by a Court cannot be appealed from, though the *refusal* to exercise such a power may be.

By Rule 112 appeals to the Court of Appeal are to be brought within 21 days from the perfecting of the order appealed from, or, in case of a refusal, from the date of the refusal. £20 must be lodged as a security for costs by the appellant, but the Court of Appeal may increase or diminish the amount or dispense with it altogether. (Rule 113.) Four days' notice of appeal must be given. (R. 114.)

County Courts, for bankruptcy purposes, have all the powers and jurisdiction of the High Court conferred on them. (Sect. 100.) Sect. 102 repeats sect. 72 of the Act of 1869, as to the general powers of Bankruptcy Courts, and gives them full power to decide all questions of priorities, and all other questions arising in a bankruptcy: but it provides that a County Court shall not (except by consent) adjudicate on any claim not arising out of the bankruptcy which exceeds 200*l.* in value. Bankruptcy Courts are not to be restrained in the execution of their powers; and questions of fact may, by the direction of the Court, be tried by jury: and though not subject to restraint themselves, they may, after a petition is presented, stay any action, execution or other legal process against the debtor. (Sect. 10.) The registrars of Bankruptcy Courts may practically exercise all the powers of the judge except the power to commit for contempt. Their powers are defined in sect. 99, sub-sect. 2, as confirmed by Rule 6, to be as follows:—

(a) To hear bankruptcy petitions, and to make receiving orders and adjudications thereon.

(b) To hold the public examination of debtors.

(c) To grant orders of discharge where the application is not opposed.

(d) To approve compositions or schemes of arrangement when they are not opposed.

(e) To make interim orders in any case of urgency.

(f) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers.

(g) To hear and determine any opposed or ex parte application.

(h) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.

The registrars of the High Court, as distinguished from those of the County Courts, may, in addition, grant discharges and certificates of removal of disqualification, and approve composition and schemes of arrangement; but the Lord Chancellor may, by order, confer these additional powers on the registrars of the County Courts as well. (Sect. 99, sub-sects. 3 and 5.)

We have not the space at our command to enter into any examination of the practice and procedure of the Courts, as provided for in the Rules of 1883. These Rules themselves must be consulted. A summary of them will be found in Law Notes, Vol. III. pp. 43 and 85.

The Crown.

By sect. 150, except as otherwise provided, the provisions in the Act as to the remedies against the property of the debtor, the priorities of debts, the effect of a composition or arrangement, and the effect of a discharge shall bind the Crown; the only provision to the contrary is that contained in sect. 40, which gives priority to rates and taxes, &c.; and sect. 30, which says that a discharge shall not free the bankrupt from certain debts due to the Crown. In all other cases the bankrupt is freed by his discharge from debts due to the Crown equally with debts due to other and ordinary creditors. This is a new provision; as the law formerly stood the discharge did not release him from Crown debts.

Costs.

Costs are in the discretion of the Court. But there is a provision similar to that contained in the Judicature Acts, that after a trial by jury the costs shall follow the event, unless upon application made at the trial, for good cause shown, the judge trying the case shall otherwise order. (Sect. 105.) And Rule 98 provides that, in the absence of express direction, the costs of an opposed motion shall follow the event. Rules 98—110 should be consulted for other points on this subject.

Death of Debtor.

By sect. 108, when a debtor against whom a petition is presented dies, the proceedings will go on as if he were alive, unless the Court otherwise orders. This section differs somewhat from the corresponding section of the Act of 1869 (sect. 80, sub-sect. 9), which only applied to a debtor who had been adjudicated bankrupt; so that if he died before adjudication, the petition could not proceed; and, moreover, it was held not to apply to liquidations by arrangement, so that in the case of a debtor who filed a petition for liquidation and died before the first meeting, there was no power to order that the matter should not fall through. (*Re Obard*, 24 L. T. Rep. 145.) This, of course, will not now occur.

Power to stay or dismiss the Proceedings.

By sect. 109, the Court can stay proceedings altogether or for a limited time, on such terms as it may think fit. Note sect. 7 hereon, and Rules 142 and 143; and also sect. 14. Sect. 111 empowers the Court to, when there are more than one respondent to a petition, dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them. This is a re-enactment of sect. 101 of the Act of 1869.

Evidence

Of a Notice.—The gazette containing any notice is evidence of the facts stated in such notice.

Of Receiving Orders, &c.—A copy of the gazette containing notice of a receiving order or of an adjudication order is conclusive evidence in all legal proceedings of the order having been duly made, and of its date. (Sect. 132.)

Of Proceedings at Creditors' Meetings.—Minutes signed by the chairman at the meeting, or the next following meeting, are to be received in evidence without further proof; and when minutes so signed are produced, the meeting will be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly had. Petitions, instruments, affidavits, documents, &c., if sealed by the Court or purporting to be signed by a judge or certified to be true copies by a registrar, are receivable in evidence in all legal proceedings. (Sect. 134.)

A certificate of the Board of Trade that a person has been appointed trustee is conclusive evidence of his appointment. (Sect. 135.)

Time.

In computing a limited time, the day from which the same is to be counted is to be excluded. If the last day falls on a Sunday, on Christmas day, Monday or Tuesday in Easter week, or on a public fast, &c. day, the act ordered to be done may be done on the next day. (Sect. 141.)

Service of Notices.

These may be served by registered letter when no special mode of service is directed. (Sect. 142, Rule 32.)

Formal Defects

will not invalidate proceedings unless substantial injustice is caused by the defect; and no defect or irregularity in the appointment of a receiver, trustee or member of the committee of inspection will vitiate any act done by him in good faith. (Sect. 143.)

In conclusion we may remark that the Act may be cited as the Bankruptcy Act, 1883, and that it does not extend to Scotland or Ireland.

NOTES ON THE FINAL.

No less than 57 candidates were postponed at the April Final. A result which was not altogether unexpected, as the papers were, taken as a whole, somewhat more searching than usual.

We give below a list of those who succeeded.

Before our next issue appears another Final will have come and gone. The Trinity (Pass) Examination being fixed for Tuesday and Wednesday, June 16th and 17th, and the Honors Examination for Friday, June 19th.

Recent statutes, recent cases, recent rules, and the Examination questions and answers for the last three or four years, should be specially attended to by those of our readers who happen to be candidates for the Examination. With the back numbers of the Law Notes and Supplements in their possession, there will be no excuse available to them if they are not well up in these matters.

In reply to a good many correspondents, we take the opportunity of stating that the new edition of "Aids to the Final" is kept back until after the publication of the list of subjects, &c., for the year 1886. This will be announced probably in July, and, as some important alterations may be made in the Examination—there are several needed—it has been considered desirable to postpone the new edition of the "Aids" so that it may be up to date. It will appear immediately after the notices are issued.

If any alteration is to be made in the classification of successful Honors students now is the time to agitate for it. Our views on the subject have been expressed more than once. If the views of some of our readers were made public through the columns of the weekly law papers during the ensuing month, or through our own columns for July, the Law Society would have some data to go upon when they make up their minds as to continuing the old classification or adopting another and better plan.

Those who wish to be admitted before the Long Vacation should leave their notice for admission at the Petty Bag Office by the middle of the month. This notice can be given before the articles have expired and before the Final has been passed; but, of course, both these events must have taken place before the actual admittance can be made. Details concerning the course to be adopted by a person desirous of being admitted will be found in the September Law Notes for 1884.

The following is the list of successful candidates at the April Final (Pass) Examination:—

H. J. Andrew, C. Asplin, C. H. Austin, M.A.
T. W. Barker, R. H. Bate, W. G. Bate, H. K. Baynes, W. T. Bettany, E. P. Bilbrough, F. C. Bird, A. Birkett, E. J. Bond, N. H. Boyns, B.A., LL.B., A. N. Brayshaw, B.A., E. Bristow, P. H. Brotherton, MacIver Buchanan, H. Burchell, B.A., H. C. Burnham, J. R. Butler.
W. K. Cargill, P. Caudwell, B.A., T. E. H. Chaldecott, J. M. Chapman, LL.B., F. K. Chater, G. E. V. S. Cheesman, J. Clark, P. Cobb, L. Coleman, F. W. Cooke, B.A., E. Cornish, F. H. Cropper, H. E. Cunningham, H. B. Curwen, R. S. Cushing.
W. F. Danby, B.A., A. A. H. De Burgh, W. B. Dendy, R. L. Devonshire, J. H. Dewes, J. J. Dunne.
A. E. Eastwood, B.A., F. Elliott, F. Ellis.
A. C. Faire, J. Fawcett, H. Fawssett, R. E. L. Fedden.
J. G. Gandy, T. Gill, I. Goldman, W. H. Green, H. H. Groves.
W. E. Hansell, H. C. Hare, I. Harries, W. H. Harrison, E. W. Hellier, H. J. Hickman, A. E. B. Hier-Evans, H. H. V. Hirst, T. H. Hiscott, J. W. Holmes, J. E. Hooper, G. W. Hume.
J. Ingham.
T. A. Jenkyn-Brown, T. John.
A. C. Keith, H. R. Kensington, R. F. H. King, C. L. Kingdon, F. W. W. Kingdon.
C. W. Langford, J. P. Larkman, H. A. Latter, H. L. Leonard, H. D. Littlewood, H. E. Lockhart, F. A. W. Lowe.
A. J. Mackay, K. T. Macturk, J. A. Marigold, B.A., H. G. Medd, F. J. Medforth, E. Mercer, E. W. Moore, H. O. Moore, R. Morgan.
J. C. Nevill, A. Newman.
W. H. P. Okeden, F. M. Oldham.
A. T. Parkinson, J. Parsons, J. F. Peachey, F. J. Perks, W. J. Phelps, T. Phillips, E. Pickersgill, G. W. Pickup, H. E. Pizey, G. J. B. Porter.
W. Raby, J. Ramwell, E. Raworth, W. W. H. Raynes, P. Rheam, F. S. Robinson, J. J. Rockett.
H. A. Sanders, J. C. St. Quintin, B.A., E. G. Saunders, H. E. Scott, E. Shalless, R. W. Shoesmith, G. G. Short, A. Sidebotham, H. V. Sinclair, W. Slark, M. Slater, W. J. Sloan, J. B. Smedley, F. W. Smith, S. J. W. Smith, A. H. Spink, H. H. Stainer, J. C. Swan.
G. Temple. A. D. Thorpe, C. H. Tucker, J. O. Twemlow.
E. Waddington, J. Wade, W. Walker, W. E. Washbourne, A. J. Weaver, H. de M. Wellborne, B.A., H. West, J. H. T. Wharton, B.A., T. White, W. M. White, A. C. Whitehead, J. J. Wiggins, E. Wightman, W. T. Williams, B.A., H. H. Williams, T. W. Willis, B.A., A. G. Wilson.

At the Honors Examination 16 succeeded in obtaining a place in the List. We give the names below.

The fact that so many even as 16 succeeded in reaching the high standard required even for third-class honors speaks volumes for the thorough and careful preparation which the successful candidates must have undergone.

The following is extracted from the list:—

APRIL HONORS LIST.

First Class.

(In order of Merit.)

Marigold, James Arthur, B.A. (Birmingham). *Clement's Inn and Daniel Reardon Prizeman;* value altogether about 35 guineas.
Brotherton, Percy Henry (London). *Clifford's Inn Prizeman;* value *5l. 5s.*
Bilbrough, Edward Power (London). *New Inn Prizeman;* value *5l. 5s.*
Kingdon, Frederick William Washington (Honiton). *Incorporated Law Society's Prizeman;* value *5l. 5s.*

Second Class.

(In Alphabetical Order.)

Asplin, Charles (Gravesend).
Buchanan, MacIver (Leek).
Butler, John Richardson (Broughton-in-Furness).
Cunningham, Henry Edmond (London).
Fawcett, Joseph (London).
Sidebotham, Arthur (Manchester).

Third Class.

(In Alphabetical Order.)

Barker, Thomas William (Carmarthen).
Clark, James (Brierly Hill).
Devonshire, Robert Llewellyn (London).
Harries, Ivor (Tenby).
Phillips, Thomas (London).
Walker, William (Bolton).

NOTES ON THE INTERMEDIATE.

As we anticipated would be the case, a very great many Intermediate students who presented themselves at the April Examination were "referred to their studies."

There is no doubt that the Law Society intend, and, as we think, very properly, that no one shall pass muster at the Intermediate unless he shows a familiar and intimate knowledge of the books which are selected for the Examination. It may be admitted

that there are parts of Stephen's Commentaries which are very difficult, but with two and a half years to get the subject ready, and the many advantages which students of the present day happily possess, there really ought to be no difficulty in acquiring the knowledge which the Law Society think fit to require.

The reason of so many failing at the Intermediate is not difficult to fathom—*the work is left far too late.* A good many students have yet to learn that a knowledge to satisfy the Examiners at the present time *cannot* be acquired by a few weeks' reading. Diligent work for the last six months at least is necessary, and during this time questions must be answered on paper. Indeed, with the view of preventing office work being interrupted, we advocate a year being given to work for the Intermediate by those who would make certain of success, and wish to build up for themselves a sure foundation upon which to pursue their legal studies subsequent to the passing of the Intermediate.

The day appointed for the next Intermediate is Thursday, June 18th.

Our "Mems. on Stephen" are crowded out this month, but will be continued in the July Number.

The following list gives the names of those who successfully passed the Intermediate Examination in April last:—

F. C. Abbott, W. Adams, W. H. Adams, B.A., J. Adlington, A. P. Aizlewood, J. Allen, W. E. Allen, F. Alpe, F. W. Ash, H. E. Ayres.

F. Badcock, J. E. Bale, G. C. Bantoft, H. Beaumont, E. A. Bell, T. Bennett, B.A., J. Bennison, S. M. Berridge, V. K. Blackburn, W. Bloomer, L. A. Bobbett, W. E. Booth, W. Bowman, B.A., J. W. Broadbent, M. T. Brown, B.A., C. E. Burkinyoung, J. Burroughs, W. W. Bury, H. P. Bush, P. Byrne.

J. T. Campion, P. L. H. Canning, F. W. Chapman, J. Charlesworth, R. A. Charleton, B.A., E. G. Chester, A. E. Chevalier, G. N. Christie, G. C. Clarke, S. A. Clench, C. J. W. Close, W. Coley, H. Comerford, W. A. Cook, W. S. Cope, B.A., C. A. Copland, B.A., J. W. Coren, E. Coulman, A. H. Crickmay, E. Cruesemann.

A. H. Dabbs, H. B. Daniell, E. P. Daniell, J. Darby, F. M. D'Arcy, W. H. Daun, B.A., F. Day, J. H. Dennis, A. W. Denton, H. G. Dixon, D. F. Douglas, B.A., E. C. Durant.

F. G. Earle, A. J. Ellaby, F. Ellen, R. G. Emsley, T. R. Eskrigge, J. I. Evans, H. E. Evershed.

J. Fearnley, H. E. Ferens, B.A., G. Fernihough, G. W. Ferrington, J. H. Field, T. W. S. Firth, F. H. Fletcher, E. F. S. Flower, S. E. Floyer, M. Formby, B.A., LL.B., G. A. Forshaw, B.A., L. W. Frank, B.A., F. J. Fulton.

R. F. B. Gabb, T. H. Gallaher, F. S. Gedge, B.A., R. R. Glover, W. W. Goddard, H. R. Goolden, H. W. Graham, E. F. Greenwood, B.A., R. J. Griffith, B.A., E. J. Grist.

S. Hallam, E. W. Hallas, A. H. Harman, C. B. Harris, H. A. W. Hastings, J. S. Hays, A. T. Heath, M. A. C. Herbelet, H. E. Herd, A. P. Higgins, W. Higgins, E. Hind, E. D. Hodgkinson, F. H. Holmes, W. Hughes, R. E. Hulme, E. L. Humphreys.

C. M. James, J. L. Jenkins, R. Jessop, D. H. Jones, B.A., J. T. Jones, L. O. Jones.

W. E. Kendrick, B.A., F. J. Kerr, E. A. Kite.

P. Lambert, B.A., J. A. Langley, B.A., LL.B., J. H. Lawton, P. Laybourne, W. A. Leak, A. J. Lear, G. T. Lee, H. J. Lee, G. H. Lewis, R. Lewis, W. L. Lewis, F. Lightfoot, G. T. Lilley, J. A. Livingston, G. A. Logan, A. L. Lowe, B.A., LL.B.

C. C. Macklin, G. R. Malkin, S. Matthews, J. Medcalf, A. G. Melley, T. Miller, A. Millward, H. H. Monckton, B.A., A. P. Moore, B.A., C. E. A. Moore, F. W. Morgan, R. A. Mullock, F. H. Munby, P. C. Muspratt.

V. E. E. Nevins.

O. Ochse, F. E. Ogden.

A. E. Paddock, A. Paget, T. J. M. Palmer, M. C. Parham, A. M. Parker, F. Parkes, J. A. Pearce, C. J. Phillips, A. Pidcock, E. W. Pierce, T. C. Pinniger, J. E. T. Pollard, W. L. Powell, S. E. Preston, C. T. Price.

T. R. Quarrell, B.A.

R. C. Ralph, J. J. Rawsthorn, W. Rayner, C. C. Reckitt, R. R. Redmayne, D. Rees, R. W. Regge, H. D. Ridley, H. M. Robinson, C. H. Roche, G. S. Rorke, C. Row, H. T. Rutherford.

S. G. Sanderson, T. J. Savage, J. Scholefield, E. Scurfield, B. G. Serjeant, J. J. Sharp, J. M. Sharp, F. W. Shells, G. Sheppard, J. E. Simonds, A. Smith, H. J. Smith, H. H. A. Smith, T. H. Smith, P. W. Snelling, C. B. H. Soame, J. H. Sunter, J. G. Spearman, H. B. Spencer, B.A., G. H. Spilsbury, B A., G. C. Sprigge, B.A., F. H. Stapley, L. Stock, O. J. Stockton, R. C. Stoneham, W. Swaine, C. B. Symonds.

A. G. Tanfield, A. W. Taylor, A. H. O. Taylor, C. A. I. Taylor, E. Thompson, A. H. Thorn, W. Thorpe, A. R. Townsend, A. S. Tratman, J. J. Travell, H. G. Troughton, J. H. Tuppen, R. Turnell, F. Turner, G. H. Turner.

W. G. Veale, H. C. Vincent, B.A., W. O. Vizard.

A. E. Wade, H. S. Waite, W. F. Wakeford, J. L. Walker, A. A. Wansey, Q. H. Warden, D. Watkins, F. Watson, H. C. Watson, G. E. Webb, H. W. Webster, A. B. S. Welch, H. R. Welsford, G. A. Weston, J. A. Whalley, E. White, E. G. Williams, H. L. Williams, R. Williams, S. Williams, R. H. B. Wilson, C. P. Winnall, F. P. Wood.

J. E. W. Yarde.

NOTES ON THE PRELIMINARY.

The following is extracted from the syllabus just issued by the Law Society respecting the Autumn Examination:—

"The Preliminary Examination in General Knowledge will take place on Wednesday the 21st and Thursday the 22nd October, 1885, at ten o'clock, and will comprise:—

1. Writing from dictation.
2. Writing a short English composition.
3. Arithmetic—the first four Rules, simple and compound; the Rule of Three; and Decimal and Vulgar Fractions.
4. Geography of Europe, and History of England.
5. Latin—Elementary.
6. 1. Latin. 2. Greek, Ancient. 3. French. 4. German. 5. Spanish. 6. Italian.

The following are the books in which candidates will be examined in the subject numbered 6 at the above Examination.

In *Latin.*—Cicero, Pro Cn. Plancio; *or*, Virgil, Æneid, Book X.

In *Greek.*—Sophocles, Electra.

In *French*.—Lamartine, Nelson; *or*, Racine, Brittanicus.

In *German*.—Hauf, Die Karavane; *or*, Schiller, Maria Stuart.

In *Spanish*.—Cervantes, Don Quixote, cap. xxxi. to lii. both inclusive; *or*, Moratin, La Mojigata.

In *Italian*.—Beccaria, Trattato dei Delitti e delle Pene; *or*, Dante's Inferno, Cantos 1—10, and Gallenga's English and Italian Grammar.

With reference to the subjects numbered 6, each candidate will be examined in *two languages according to his selection*. Candidates will have the choice of *either* of the above-mentioned works in the two selected languages."

At the Preliminary Examination held on the 6th and 7th May last, 106 candidates were successful.

The days fixed for the next (July) Preliminary Examination are Wednesday and Thursday, July 8th and 9th. Thirty days' notice of intention to be examined is necessary.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Answers to Correspondents.

Mulcaster.—The principle of *Thynne* v. *Glengall* does not apply if any part of the debt is payable in the settlor's lifetime, and no parol evidence is admitted to show that in such a case satisfaction was intended. This is what is intended to be shown in *Hall* v. *Hill*. The other point you refer to is quite correctly stated in Aids to Equity, see p. 49.

William Swaine.—It is believed to be a very complete book, and is written expressly for the purpose you name; but a knowledge of Stephen, Vol. I., or Williams's Real Property, will also be required.

A. T. B.—(1) It must be stamped, as it is to be acted on here. (2) You do not say what costs. B. no doubt could keep the 10*l*., and if any action were brought to recover it, he would raise the balance of the debt as a set-off.

J. L. Sykes.—April, 1886. If you have the 4th or 5th edition of Gibson's Guide to Stephen, the edition you have will suffice. The 5th edition of this Guide brings the book up to date, including the Acts for 1884. We do not know anything of a new edition of Stephen.

Subscriber.—Yes, unless the present rules are altered.

A. Bartram.—We think that the existing policy would not be upheld by the Courts. The point has, however, never been decided as far as we can answer. The safest plan would be to do as you suggest, issue a fresh policy under the Act of 1882.

X. Y. L.—Thanks. The exception you refer to ought perhaps to have been stated.

X. Y. Z.—(a) June, 1887. (b) This we cannot answer. (c) For the attendance at the trial, the money you have received is all you are entitled to, and we know no way you could now obtain your expenses for attending at the Police Court. Your principal clearly has no claim.

S. D. Fenwick.—The answer is quite correct. The person injured could sue the tenant if he was under liability to repair, as he usually is expressly or impliedly; but in the case supposed, he would have a direct remedy against the landlord, whether the tenant were under liability to repair or not. (See notes to *Todd* v. *Flight* in Shirley's cases.)

J. L. Whitaker.—To answer your query in the way you ask would take a column at least. It is, of course, impossible to devote such space to one correspondent. Shortly, we do not think anything could be removed except the loose rails.

Subscriber.—No; only those children who are alive when the wife dies take. (See notes to *Viner* v. *Francis*.)

P. S.—Thanks; strictly you are right; both dates should have been given.

C. T. Brice.—Whichever way you read the question the answer required is the one we gave.

R. W. W. Hortel.—"Preliminary Made Easy," published by Reeves & Turner, 100, Chancery Lane.

K. T.—We think that the reversioner is clearly protected by the section you quote, but that A.'s executors have no claim for the arrears.

N. J. Howell.—This is a point which cannot be confidently answered. Probably the solicitor will lose the right to be a justice.

C. B. Symonds.—Please see answer to J. L. Whitaker, *supra*.

F. W. Billson.—Thanks. We will consider the matter, and give an article if desirable. As to bookmakers we merely meant to express our views as to what the law *should be* on the strict construction of the Act, and we do not contend that construction would be desirable.

Glanllyn.—We think clearly that the mortgagee ran his risk, and cannot throw the loss on the valuer. Clearly the solicitor is not responsible.

G. F.—These are questions which can only be answered by the Court.

S. Strover.—Unless it can be proved that your dog was *savage*, and in the habit of killing or injuring domestic animals, and you knew it, you are under no liability. Scienter must be proved in such a case. As the action would be one of tort, you could not plead infancy. Your father is in no way responsible.

GAUTIER.—(1) The section seems to take away the preferential claims. (2) Certainly not.

UNDERGRAD.—There would appear to be no objection.

F. BURROW.—Many thanks.

PERCY MELLOR.—The date of a deed is nothing; but even if the delivery took place on the Sunday, we do not think the deed is thereby invalidated.

W. F.—We are sorry that we cannot advise on this point.

CYMRO.—We see no objection to your putting the money into your own pocket.

B.—(1) no infringement; (2) and (3) infringements, we should say.

C. E. F.—We can find no case from which to answer your question; but we fancy the decision right.

B.—We do not think so; he must proceed for damages, or distrain the herons, if he can catch them.

JAMES B. GRAHAM.—The answer is as we gave it.

H. WYNN PARRY.—The reference to the case, which is an old one, is given in the answer, viz., 2 M. & W., *i.e.*, Meeson & Welsby's Reports.

X. B.—Your best plan would be to return the circulars and touting letters. If you continue to receive letters begging you to read for the Examination with the person who, uninvited, wishes to thrust his services upon you, in the interest of law students at large it might be well to do as you suggest, namely, expose the name of the writer. As far as we know, the practice is as unprecedented as it is ungentlemanly and unprofessional.

H. J.—We do not prepare for the Preliminary Law; our whole attention is given to the Intermediate and Final Examinations of the Law Society. You had better write to John Gibson, M.A., who prepares for the various Preliminary Examinations.

Correspondence.

To the Editor of the "Law Notes."

SOLICITOR'S CLERKS IN CHAMBERS.

DEAR SIR,—Barristers are compelled to appear in Court in person! Physicians and surgeons are not allowed to leave a practitioner unqualified by law to do their work! An auctioneer cannot sell by deputy! Why, then, should solicitors employ clerks (not qualified by law) to do the work which they only are authorized to do? Details in their own offices are one thing, but appearance before a judge and others in chambers by persons unadmitted, quite another. The Law Society have argued lately before the Courts that anyone helping a plaintiff in person is acting as a solicitor, and, also, that to write for a debt is pretending to be a solicitor contrary to statute; and, of course, what the society says in one case they cannot deny in another.

The statute 40 & 41 Vict. c. 68, imposes a penalty on a person for "pretending to be or using a name implying that he is a solicitor," and it is also an evasion of the Stamp Act.

The practice of solicitors attending at chambers by their unadmitted clerks is derogatory to the profession, and very hard on the general body of practitioners, as it enables monopolies of business to be established which the solicitors at the head of the firms are physically incapable of carrying out; and too often a young solicitor, who has paid his premium, stamp duty and fees, and really worked hard to obtain the necessary qualification, finds himself squeezed out of the profession by unqualified practitioners. It has been said, that without clerks to do the chamber work the large firms could not exist. But is their existence necessary? The present practice of employing clerks having existed for so long, it would seem fair to allow such as are now employed to continue. This could be easily managed by a register, as was done in the case of existing dental practitioners when the Dentists Registration Act was passed.

A SUBSCRIBER.

To the Editor of the "Law Notes."

SIR,—I am going up for the Intermediate in June, 1886, and shall be glad to correspond with one of your readers who will be going up at the same period.

J. B. POWNALL.

Market Street, Ashton-under-Lyne.

To the Editor of the "Law Notes."

SIR,—It may interest your readers to see the Preliminary Programme of the Congress of Law Students which is to be held in London at Clement's Inn in June. There will attend upwards of sixty representatives from all the most important Law Student's Societies throughout the kingdom. All Law Students are invited to attend.

CHS. KAINS-JACKSON, H. J. H. BULL, W. L. MUNDAY, A. E. RAMSDALE (*Congress Committee*).

S. F. GOODALL, Hon. Sec.

LAW STUDENTS' CONGRESS.

PROGRAMME [Preliminary].

June 18th, 1885.—1st Meeting, 11 a.m.—2 p.m.

Chairman: Bateman Napier, LL.D. (United).

Paper will be read on "Law Students' Societies, their Constitution, Objects and Uses," by C. B. Wilson, Jun. (Liverpool).

Motion—"That the union of bar students and articled clerks in a debating society or club (wherever practicable) is of mutual advantage."

Motion—"That a regular attendance at a Law Students'

Society is calculated to develop a readiness of speaking and an ability in debate of high value to the lawyer in his professional career."

2d Meeting, 7.30. Chairman: C. F. Whitfield, B.A. (Liverpool).

Paper will be read on "Lectures and Classes as a means of Legal Education," by A. Smith (Birmingham).

Motion—"That lectures and classes are desirable as means of supplementing the teaching received by an articled clerk from his principal."

Motion—"That lectures and classes continuously attended during the term of articles should fit the student for passing his exams without special coaching or other exceptional effort being necessary."

June 19th.—3rd Meeting, 2 p.m.—5 p.m.

Chairman: A. H. Coley (Birmingham).

Paper will be read on "The System of Legal Education," by A. S. Tratman (Bristol).

Motion—"That the establishment of a Law University is needed."

Motion—"That the entrance to the Profession should be by passing the Matriculation Examination of one of the Universities."

At 7.45 The Congress Dinner.

To be held at the Duke's Salon, the Holborn Restaurant.

June 20th.—4th Meeting, 11 a.m. Chairman: Mr. H. J. H. Bull.

Paper will be read on "The position and prospects of Articled Clerks," by Mr. Charles Kains-Jackson (United).

Motion—"That the system whereby paid clerks can obtain articles is detrimental to the status and credit of the Profession."

To open: Mr. Bush (Preston.)

Motion—"That articles should be shortened by one year."

To open: Mr. Charles Kains-Jackson.

Motion—"That a two years' interval between practising as a solicitor and proceeding to the bar should be no longer required."

Names of speakers and delegates will be announced as soon as ascertained.

REVIEWS.

NEW WORKS.

Concise Guide to Modern Equity. By Arthur Underhill, M.A., LL.D., Barrister-at-Law.—In a concise and handy form the author has reproduced his Nine Lectures on Equity delivered at the Incorporated Law Society. In his preface he disclaims any pretensions to his book taking the place of such a standard work as Snell. He considers it merely as a primer or introduction to the subject. We can at once say that in our opinion it fully achieves its object. It is, in short, on much the same lines as Mr. Haynes' well-known lectures on the same subject, possibly more condensed; for an introductory work this is, however, a distinct gain. Lectures reproduced afterwards in the form of a book obviously cannot be criticised in the same spirit as a regular work on the subject. The necessity in each lecture of disposing with one entire portion of the subject renders it impossible to do more than sketch the outline of a doctrine. On no account, therefore, is it permissible to criticise omissions, rather the author deserves praise for omissions, provided only they are judiciously made. On the effect of the decision in *Reynolds* v. *Godlee* on the doctrine of conversion, the learned author joins issue with the regular text books, and roundly charges them with having gone astray, and, we confess it, to our minds satisfactorily proves his contentions. The portion of a lecture devoted to "administration" appears to us scarcely full enough. Certainly readers should be informed that *although* the Judicature Act made all debts payable *pari passu* as in bankruptcy, the practical effect of *case law* is that the only bankruptcy rule the Chancery judges have adopted is that relating to secured creditors; a reader would almost infer from the statements on p. 228 that the present order of payment of debts in Chancery was specified by the Act. With pleasure we turned to the lecture devoted to Chancery procedure, a subject never, as a rule, properly treated for students. Our expectations were scarcely realised. The subject of chamber procedure is indeed treated; but infinitely better would it have been to have devoted less space to proceedings down to judgment, very similar to those in the other branch, and more to chamber procedure. The style adopted is for the subject light, and somewhat overburdened with quotations, selected from Milton to "Iolanthe." In a regular work this might be matter for animadversion; in lectures it is a pardonable sin. As an introductory work to a difficult subject we can with every confidence recommend it; but, of course, students must not rely upon it as affording sufficient matter for the purposes of the Final. It is published by Messrs. Butterworth, 7, Fleet Street.

Statutes for Students. By James Carter Harrison, Esq., Solicitor.—This well-printed work will be welcomed by students. The author has selected a most excellent set of statutes in Conveyancing, Equity and Common Law, and gives the provisions of the most important sections. The selection of statutes is, to our mind, by far the best which has yet appeared in any book of statutes for students. The author has evidently grasped—what persons are for the most part so unwilling to recognize—that for a work to be of any use in these days of stringent examinations, it must be thorough and exhaustive. In the next edition no doubt care will be taken to introduce statutes on the extra subjects, so as to make the book more complete still; and we trust that when such second edition is called for, it may be found possible to use the pruning knife somewhat with regard to the provisions of the Acts, and to add largely to the notes; such a course would make the book very valuable, and secure for it the position of a standard work, and the size of the book would not be materially increased, since many sections now appear at, to our mind, a wholly unnecessary length. It is published by Messrs. Reeves & Turner, 100 Chancery Lane, W.C.

NEW EDITIONS.

The Principles of Contract. By FREDERICK POLLOCK, Esq., Barrister-at-law. Third edition.—This most excellent treatise on the general principles concerning the validity of agreements in the law of England, is so thoroughly known and appreciated by the profession that we need merely announce the publication of a new edition, and express our opinion that it has been prepared with great care and is accurately brought down to date. Instead of a mere list of cases, we find in the present edition, after the names of the cases, reference to all the leading reports; a most valuable addition to the work, now that there are so many books of reports. The work is published by Messrs. STEVENS & SONS, Chancery Lane.

Broom's Constitutional Law. This work has entered upon a second edition, which has been prepared by G. L. DENMAN, Esq., LL.M., Barrister-at-Law. The work is full of interest, and we heartily recommend it to those of our readers who are interested in the subject, for no better book could be placed in their hands. The new edition appears to have been carefully prepared, and brought down to date. It is published by Messrs. MAXWELL & SON, 8, Bell Yard, W.C.

Introduction to Roman Law. By W. A. HUNTER, LL.D.—This little book offers to the bar student a most useful introduction to the subject of Roman Law, and though candidates for the Solicitor's Final are not examined in the subject, they would assuredly derive great profit by perusing it. For they would find that by comparing the Roman Law with our English Law, and observing the points of difference or similarity, they would be able to learn much. It is written in an interesting style and is by no means dry reading. It is divided into Six chapters:—I. The History of Roman Law; II. The Law of Property; III. The Law of Persons; IV. The Law of Obligations; V. The Law of Inheritance and Legacy, and VI. The Law of Procedure. It also contains an appendix of test questions on each chapter, and a glossary of terms met with in Roman Law. It is published by Messrs. MAXWELL & SON, 8, Bell Yard, W.C.

Guide to Prideaux's Conveyancing. By JOHN INDERMAUR, Esq. We have received a second edition of this useful Guide. It is published by GEORGE BARBER, Cursitor Street.

The Review of *Hunter's Roman Law* is held over.

We have also received for review *Bythewood & Jarman's Conveyancing*, Vol. II., published by H. SWEET & SONS.

LAW STUDENTS' DEBATING SOCIETIES.

THE UNITED LAW STUDENTS' SOCIETY.

Three meetings of this society have been held during the past month at the Law Institution. On the 4th May (Mr. J. R. Yates, chairman), the secretary was directed to write to the Lord Chancellor requesting him to undertake the office of President of the Society rendered vacant by the death of the late Earl Cairns. After further business was disposed of, Mr. J. C. Marshall moved, "That it is desirable in the interests of the empire that a war with Russia should be no longer postponed." There spoke in favour of the motion Mr. Munday, Mr. Ramsdale and Mr. Steere, and in opposition Mr. Richardson, Mr. M. Whitehouse, Mr. Common, Mr. Goodall, Mr. Rawlinson, Mr. Maggs and Mr. Elgood. The opener replied, and the motion was, on a division, lost by the casting vote of the chairman. On the 11th May (Mr. H. J. H. Bull, chairman), Mr. F. B. Moyle moved, "That the costs of a mortgagee in a foreclosure action should be solicitor and client and not party and party costs." He was opposed by Mr. Yates, and supported by Messrs. Maggs, Ramsdale and Goodall. The motion was carried by a majority of four votes. On the 18th May (Mr. A. Holah, chairman) a paper was read by Mr. Kains-Jackson, entitled "Progress, a Fallacy," followed by a motion, "That without a recognition of authority apart from popular opinion, whether on political, literary, or social subjects, no enduring progress is possible in any country." The motion was supported by Mr. Eiloart and Mr. Goodall, and opposed by Messrs. Munday, Maggs, Mitcheson, Batchelor and Hagrem, and on a division was carried by a majority of one vote.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. July, 1885. Part 7.

SOME NOTES.

UNDER "Law Students' Societies" our readers will find a report of the recent "Congress."

We suppose the numerous resolutions which have lately been passed by provincial law societies, reprobating the growing tendency of judges to use abusive language towards solicitors, is beginning to have some effect. Mr. Justice Kay said the other day that no higher testimony to the integrity and honour of that branch of the profession could possibly be given than the fact that such large sums of money are constantly placed in their hands without any security. His Lordship added, that he had no doubt instances of abuse of trust are comparatively rare, but admitted that when brought to the attention of the Court they seemed to be actually numerous. Of course the good cases do not come before the Court at all. What a long time it has taken his Lordship to understand that he only sees the bad cases! but we welcome the slightest recognition of our virtues from his Lordship; it is better than tons of praise from any one else.

The case of *Wodehouse* v. *Wodehouse* suggests some very serious thoughts as to what constitutes "cruelty." To leave a wife in delicate health, near her confinement, in a house without any money, with express orders to the cook not to wait on her or attend to her or supply her with any food, which orders were strictly complied with; to do all this is, it seems, not "cruelty." Truly a very hard case. We all know the curious anomaly which also occurred in this case, that a husband may openly be guilty of adultery with a servant in the house, and so long as he abstains from "cruelty," the wife cannot get a divorce. Was not the conduct in this case something more than the indifference, neglect or aversion of the wife's society, as in *Cousens* v. *Cousens?* One of the general tests of cruelty is injury to health; this was so laid down in *Tompkins* v. *Tompkins*. Surely the conduct in this case would be likely to cause injury to health. The Court of Appeal ought to have made this a leading case on "cruelty."

It is just as well for the public to know that the object of the Copyright Act is, as Mr. Justice Chitty put it, "to require that the date of the first publication should be given, so that the public might know exactly from what time the forty-two years' ownership commenced." Application was made to him to restrain the publication of a tale called the "Star of the South"; in evidence it turned out that it was really published before the time stated in the certificate, and the action was, therefore, dismissed with costs, with the above trite observation.

We suppose Mr. Commissioner Kerr is right, but we always thought that an Atheist could affirm and give evidence in a court of law. According to Mr. Commissioner Kerr it seems, however, an Agnostic cannot do so. His Honour acknowledged that he did not know what an Agnostic was. He said he did not understand those grand learned words too often in the mouths of the ignorant. Mr. Commissioner Kerr should really base his objection to take an Agnostic's affirmation on some one ground, not alternatively. First reason was, that the Agnostic did not believe in a Deity and a future state; second reason, that the witness must state that he had a conscientious objection to take the oath.

But surely if he did not believe in a Deity and a future state, must he not have had a conscientious objection to take the oath? We should say so. Then if he had the conscientious objection, according to his Honour's own showing he was entitled to affirm; for his Honour said a man who affirms must state that he has a conscientious objection to take the oath. That is the law of England, whether right or wrong. Possibly. Does Mr. Commissioner Kerr think he is quite right in refusing to receive that man's evidence? We can say that in the Tottenham Court Road assault case we noticed that evidence of one witness was taken on affirmation because he was an Atheist. If an Athiest cannot affirm, what was the good of 32 & 33 Vict. c. 68? Let Mr. Commissioner Kerr look at the statute book again. Someone must be wrong here.

Here, when are the next races? Someone thought that a man who is in the habit of frequenting race-courses is not fit to be a trustee. We shall go to Goodwood; how blessed it would be to be disqualified from acting as trustee! Mr. Justice Chitty thought not. If the learned judge's decision had been the other way, what a lot of trustees would have been disqualified! But does it not depend a little whether a man is bookmaker or a plunger? The solvency of the former is beneficially affected; of the latter—well, we never mean to go to Ascot again.

What is the good of board schools? Here, a youngster at Windsor picks up a five pound note, and, not *knowing what it was*, gave it to a chum to make cigarettes with. Very nice cigarette paper indeed, only just a trifle expensive perhaps. How-

ever, a man passing by took in the whole situation: offered two shillings for the cigarette paper. Now the boys sued him in the County Court for unlawfully detaining the note, and the judge gave judgment for the plaintiffs with costs. But why? the youngsters had sold it for two shillings. Did they return the two shillings? We don't quite understand youngsters at a go-a-head place like Windsor being so green. Open question whether the board school had not taught them what a five pound note was.

So the judges have not been sitting as the Court for Crown Cases Reserved at all. Lord Coleridge deserves thanks for his explanation the other day when hearing the arguments in *Reg.* v. *Macdonald.* This case had been already heard before five judges under the statute creating the Court for Crown Cases Reserved. The judges were unanimous, and until the present case a point was only re-argued before the full bench when they disagreed. It was very questionable whether, the five judges being unanimous, the Court had power. Lord Coleridge, however, seems to think they have, and was pleased to call together nearly the whole common law bench, carefully pointing out that they had no power to alter the judgment of the Court for Crown Cases Reserved. They simply met as the old common law assembly of judges, and ill-natured persons will say, because they had nothing else to do. Possibly Lord Coleridge thinks with Solomon, that in the multitude of counsellors there is wisdom. Well, in this particular case, they kept their wisdom pretty well to themselves, for they gave a judgment without any reasons, and, considering they were specially called together to consider the theoretical correctness of a difficult criminal decision, such a result was about as unsatisfactory as it well could be.

Lord Coleridge was dreadfully shocked the other day to find a County Court judge had been administering law contrary to the very first principles of justice. It certainly was rather a bad mistake as to evidence as to handwriting. Lord Coleridge said it could only be accounted for by the extraordinary influence of the learned counsel. Very probable. County Court judges are not singular in this susceptibility to influence on the part of the bar: they cannot be very harshly criticised for committing a fault from which their higher brethren are not altogether free.

What terrible fellows those Irishmen are to disagree! The Irish Exchequer Division, in *Brady* v. *M'Argle* (14 L. R., Ir. 174), laid down that to dishorn cattle is cruelty and unlawful. Evidence was given that the operation caused pain and suffering, and the Court held that the statute exactly met the case. Now the other day the Common Pleas Division has just "trod on the tail of the coat" of the Exchequer Division, and quietly laid down that, provided only it is skilfully done, it is a perfectly lawful act!

The law of railway hand-crushing is not satisfactory. Quite recently the Court has found itself bound most reluctantly to refuse relief in consequence of the House of Lords' decision in *Jackson* v. *Metropolitan Rail. Co.* In the case of *Bullner* v. *L. C. & D. Rail. Co.*, the train was full; plaintiff was practically told to get in anywhere; he jumped into a full compartment, received a push from another passenger, put out his hand to save himself, and had it crushed. Held, by the Divisional Court, no remedy. Why should railway companies be privileged to invite more travellers than they can carry, and then not be liable for the direct consequences? If the train had not been crammed, the accident would not have happened: it is all very fine for the judges to discuss the philosophical distinction between sequence and causation, that is not much satisfaction for the plaintiff.

A penalty of 3,373*l.* on smuggled cigars and tobacco, enforced the other day against a man named Porter, is a good haul for the Revenue. Cannot the Revenue manage to wink at some good wholesale "smuggles" for a considerable time, and proceed to enforce full penalties? That would bring in more than the regular duty. If this could be done, it might save us a penny or two in the income tax. The authorities appear to have known of one or two "smuggles" before they prosecuted: scarcely quite fair this.

As far as the facts were concerned, we were personally very pleased to see the action of *Adams* v. *Coleridge* compromised. But how about that little legal point? Was Mr. Justice Manisty right in overruling the verdict of the jury? Surely that is a question lawyers have the right to have answered. Compromises of unpleasant personal scandals are all right; but was there not just a little too much haste in the burying of the jury point? However, we are all willing to forgive and forget if his Lordship will promise never to do it again.

We thought that two institutions always won their cases, the Bank of England and the "Times." The latter the other day failed to obtain an injunction against the "Morning Mail" for infringing the title of a paper called the "Mail," published by them. Considering the "Times" now issues law reports, called the "Times Law Reports," just a little bit like the "Law Times Reports," it is a little comical to find them objecting to the "Morning Mail."

The "Eureka" shirts have appropriately followed the "Masher" collars into Chancery. Application was made the other day to restrain another hosier selling shirts called "Ureika." The infringer swore he told his assistant to call them "Unique." The assistant did not quite swear the same. The judge appeared to think the only thing unique about it was the defence.

Can an English solicitor's bill for work done in France be taxed? We should have thought there was no doubt about it. The Court said certainly it could be. It had the familiar item 6*s.* 8*d.*—a very English look about it, the Court thought.

Lord Coleridge, in *The Att.-Gen.* v. *Welsh Granite Co.*, has had to decide whether granite fell within the word "minerals," which the Crown claimed under an Act reserving "all mines, minerals, ores, coal, limestone and slate." Luckily his Lordship only had to determine whether granite was a mineral or not, although, of course, he doubtless knows the distinctions between syenite, syenitic granite, protogene, hypersthenic granite and pegmatite. However, it is enough for us to know granite is a mineral.

Surely that most important Indian decision will come over to the Privy Council for review. We do not pretend to be up in Indian law, but the point involved was something like this. In one part of India there existed a custom that on coming of age a son can claim his share of all the inherited property, the father only being allowed to keep what he has made by his individual exertions. The custom appears till recently to have been more honoured in the breach than the observance. However, at last an enterprising Hindoo, an only son, on attaining age, claimed half the inherited property, and, as far as we can understand it, the highest available court out there has decided that the claim is good. We expect there are some sons over here who would like that Hindoo custom extended.

There was a considerable amount of force in Mr. Justice Mathew's observation the other day in connection with preferring an indictment in respect of a private libel. "If," said his Lordship, "the prosecutor is so anxious to vindicate his character, why does he not bring an action in which both parties could be examined?" There is just a little of the cowardly in preferring an indictment; you effectually "shut up" your libeller, at least for the trial.

Benefit societies, take note. Mr. Cooke has just laid down that a waiter's dress suit comes within the definition "tools or implements of trade or calling" as mentioned in the society's insurance rules; friendly and benefit societies will do well, however, not to alter their rules to meet the case, or they may lose business. The decision is a little startling, but no doubt correct. The waiter would not be allowed to continue his vocation without a dress suit; he had insured the implements of his calling against fire: he had no other "implements." Still it would look very funny to see in the corner of a card, "Implements indispensable," instead of "Evening dress indispensable."

So we suppose *Reg.* v. *Hazzlewood* may be considered overruled. At any rate the Court has not followed it in the recent case of *Reg.* v. *Sampson*; a farmer sold certain farm stock which was subject to a bill of sale; it was held that by selling he represented himself the true owner, and had, therefore, committed the offence of obtaining money by false pretences.

To make use of Royalty to obtain arrears of rent was certainly a flash of genius; someway, though, it does not seem to have given general satisfaction. Certainly not to those who owed rent; we should imagine that neither did Royalty particularly care about being utilized in this manner. However, to be admitted a student and called all in one evening would to many be sufficient compensation.

The need of the Disused Burial Grounds Act of last year has been strikingly exemplified by the facts in the Peel Grove Burial Ground case before Mr. Justice Day. The defendant, a speculating builder—what will a speculating builder not do?—took a lease of a disused burial ground, intending to transform it into a "highly eligible building estate." Imagine an eligible building estate with 18,000 corpses interred there! After the agreement was signed, but before the houses were commenced, this Act was passed; the defendant could not put up the houses, was he liable under the agreement? His Lordship held that in consequence of the statute the agreement became void *ab initio*. Pity it was that his Lordship could not have held defendant to the agreement, that is, made him liable to pay the rent agreed on without being able to put up the houses. But this would have benefited the plaintiff, and he was equally outside the range of sympathy.

So the Royal Arms only costs two guineas! A butcher was summoned for using the Royal Arms without licence. It appeared that he had supplied the Royal household with meat, and so was entitled to display them over his shop and on his trade carts but not, said the Revenue authorities, on his *private* waggonette. So thought the magistrate. "All right," said the loyal butcher, "then I'll pay for a licence for using a crest and still have the Royal Arms on my private carriage;" and on this understanding only a nominal penalty was inflicted.

That juryman who was fined 10*l.* the other day will not return himself "dead" again. He was served with a jury summons; he and his father had the same names; he carried on his father's business. A brilliant thought occurred to him to evade the summons: he returned the summons marked "dead." The authorities, however, declined to see this new and curious application of "like father like son."

Some one suggests that, instead of using violence towards those secularists at Leicester who played cricket the other Sunday on the green, and on principle, it would be infinitely better to take their names and institute legal proceedings against them. We should advise the Sabbatarians to take counsel's opinion first. There is an old statute, *mirabile dictu* not a penal statute, of Charles I.'s reign, still unrepealed, by which a penalty of 3*s.* 4*d.* is incurred by any person who meets out of his own parish for any sport or pastime whatever, or meets in his own parish for certain games and other unlawful exercises. Is it not, therefore, legal to meet for a lawful game in your own parish? Cricket is *not* one of the games forbidden by the statute. Some time ago (1 Law Notes, 130) we epitomised this Act.

That heathen Chinee is giving the authorities trouble. The "Imperial Gazette" of Pekin says that it often happens that a candidate never goes in for examination at all, but hires a substitute. They are very much troubled to detect this fraud, and suggest simultaneous examination in each province: we are willing to back the heathen Chinee finds another way of evasion. We fancy we know one or two candidates over here who wish for the nonce they could become "heathen Chinees."

The "King of the Road" has succeeded in extinguishing the "Monarch of the Road" with the help of Mr. Justice Kay and an injunction. The "King of the Road," it seems, is a very excellent bicycle lamp; the "Monarch of the Road" was a pirate, an infringer of the patent, a kind of highwayman, and got very properly snuffed out.

A correspondent sends us what appears to us to be the most flagrant case of advertisement we have yet seen. Will the Law Society kindly say whether this conduct is professional? If one is allowed to advertise, we all ought to be allowed to do so. If nothing is done to prevent this breach of professional etiquette, we shall all have to advertise in self-defence.

The decision in the Warburton will case is not pleasant for the defendants. They will now have to refund the whole estate, amounting to 35,000*l.* Well, most of it they seem to have themselves. But how about the lawyer? are any further proceedings going to be taken in his case?

CASES OF THE MONTH.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXIX., where further details of the case may be found.]

I.—CASES CONFIRMED, REVERSED OR ALTERED ON APPEAL.

[The references under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., Tudor, and Student's Conveyancing, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, Tudor's Conveyancing Cases, and Gibson & McLean's Student's Conveyancing, and indicate the page at which a note of the decision should be entered.]

Lulham, Re, Brinton v. Lulham.

(S. J. 554.)

The decision of Kay, J., in this case, given in 3 Law Notes, p. 262, has been affirmed by the Court of Appeal.

Hesker v. Wood.

(T. 495; W. N. 116.)

The decision in this case (4 Law Notes, p. 125), that double costs can be recovered under sect. 105 of 8 & 9 Vict. c. 100, notwithstanding the Judicature Acts and Rules, has been confirmed by the Court of Appeal.

Regina v. McDonald.

This case has been re-argued, but the same decision was arrived at. (See 4 Law Notes, p. 159.)

II.—GENERAL CASES.

[For explanation of references, see previous heading.]

If A. by his will gives property to trustees upon trust for "his dear wife" B. for life, and after her decease for his "children" equally, and at the time of the will and at her death B. was not his wife, the marriage ceremony he had gone through with her being void, owing to A.'s proper wife being, though unknown to him, alive at the time, has the only child of A. by B. any claim to the property, such child being a posthumous child, born shortly after A.'s death?

Bolton, In re, Brown v. Bolton.

(T. 513; W. N. 128.)

Kay, J., held that the child, being illegitimate, had no claim under the will; and after examinin

the authorities he stated that "the rule of the Court was that the word 'children' must be construed to mean 'legitimate children,' just as if the word 'legitimate' were written before it, unless it were possible to find from the will and the surrounding circumstances, which the Court was at liberty to look at in construing the will, a sufficiently clear intention that certain illegitimate children were intended to be included in the word 'children.'" His Lordship did not find in the case before him any such indication of intention as to enable him to construe 'children,' so as to include the future-born illegitimate children of the testator.

(Wms. P. P., p. 546.)

If an action of tort is before trial by agreement of the parties referred to an arbitrator, and the plaintiff dies before the award is made, does the maxim "actio personalis moritur cum personâ" apply?

Bowker v. Evans.

(W. N. 117; L. J. 106.)

It does, even though, as in the above case, the order of reference contain a clause that the arbitrator should publish his award "ready to be delivered to the parties in difference, or such of them as require the same, or their respective personal representatives if either of the said parties die before the making of the award." The Court of Appeal considered that the agreement for a reference was only an agreement as to procedure, and that the death of the plaintiff before award put an end to the cause of action and to the arbitrator's authority. The provision as to delivering the award to the personal representative was of no avail in an action of tort.

(Gibson & McLean's Student's Practice, p. 266; Wms. P. P., p. 312.)

If a railway passenger is put into an overcrowded compartment by a porter, and receiving a push from a fellow passenger, puts his hand on to the door to save himself, and in so doing sustains an injury to his finger, caused by the carriage door being closed by the porter, can he recover damages from the company?

Bullner v. L. C. & D. Rail. Co.

(T. 534.)

On the authority of *Jackson* v. *The Metropolitan Rail. Co.*, decided by the House of Lords, the Divisional Court upheld the decision of the County Court judge, that the company were not liable, as the injury was caused by the passenger's own act. Lord Coleridge could not distinguish the present case from Jackson's case; and while he did not approve the decision in the latter case, was bound to follow it.

(5 Fisher, p. 817; Shirley, p. 256.)

Can a term be enlarged into a fee simple under sect. 65 of the Conveyancing Act, 1881, if held at the yearly rent of "one silver penny if demanded"?

Chapman and Hebbs, In re.

(S. J. 517.)

Terms which were originally not less than 300 years, and of which 200 years, at least, have still to run, may be by a declaratory deed converted into the fee simple, provided (*inter alia*) there is no rent or only a peppercorn rent, or other rent having no money value. The question which Pearson, J., had to decide in the above case was, whether a "silver penny" had a money value; and he held that it had not; and that the term was convertible. He considered that the rent was only reserved, so that it might be demanded for the purpose of keeping alive evidence of the tenancy; he remarked that the fact that silver pennies no longer formed a part of the coinage of the realm favoured his opinion.

(Compare *Smith* v. *Stott*, 2 Law Notes, p. 101; 1 Prideaux, p. 446; Student's Conveyancing, p. 195; and as a note to sect. 65 in books on the Conveyancing Acts.)

If A. tears up his will, with the intention of revoking it, and the pieces of the will are found among his papers at his death, put together again, so that the will could be read, will the Court admit the pieces to probate?

Francis v. Francis and another.

If the jury find that the will was torn up *animo revocandi*, the Court cannot allow probate of the pieces, although satisfied that the testator had subsequently repented of his act of revocation, and intended the revoked will to be restored.

(Student's Conveyancing, p. 422.)

Can one of the children enforce, as against the father, a covenant by him contained in a separation deed between him and the mother, and entered into with the trustees of the deed, to pay the expense of maintenance and education of some of the children of the marriage?

Gandy v. Gandy.

(T. 520; W. N. 122; S. J. 538; L. J. 109.)

This question was decided in the negative by the Court of Appeal, reversing the decision of Bacon, V.-C. Cotton, L. J., said, that "As a general rule a contract could not be enforced by a person who was not a party to it. The rule was, however, subject to this exception—that if the contract had been entered into with one of the parties on behalf of a third person in such a way as to entitle that third person to say he was a *cestui que trust* of the benefit of the contract, the third person was entitled, as having a beneficial interest, to sue the person who had contracted, in order to enforce the contract." But, in his Lordship's opinion, the case in question did not fall within the exception, but within the rule itself, for he did not think it was intended to give the children any beneficial interest as the consequence of the covenant being performed. The covenant was merely intended to make provision for the children as between the husband and the wife, and the action against the husband could only be maintained by the trustees, with whom the covenant was made.

In a foreclosure action must the Court, under sect. 25 of the Conveyancing Act, 1881, on the request of the mortgagee, order an immediate sale of the mortgaged property?

Green v. Briggs.

(W. N. 128; L. J. 114.)

The Court has a discretion as to the time of the sale; and, in the above action, which was brought by an equitable mortgagee, Kay, J., directed, the property being small, that the sale should only take place if, at the end of three months from the chief clerk's certificate, the mortgagor had not redeemed. This follows *Wade* v. *Wilson* (L. R., 22 Ch. D. 235), in which a month was allowed to elapse after the certificate and before the sale.

(Student's Conveyancing, p. 238; and as a note to sect. 25, sub-sect. 2, of the Conv. Act, 1881.)

If A., a married woman, is killed by negligence, can B., her husband, maintain an action for damages under Lord Campbell's Act, when the evidence shows that A. and B. had for a long time before A.'s death lived apart?

Harrison v. L. & N. W. Rail. Co.

(T. 519.)

It appeared in the above case that A. was entitled to a reversionary interest for her own use in 7,000*l.*, in the event of her mother dying in her (A.'s) lifetime. This, the husband contended, gave him a sufficient interest in his wife's life to maintain an action for damages under Lord Campbell's Act; for he might obtain some settlement of the 7,000*l.* by instituting proceedings for restitution of conjugal rights, or he might become a pauper, and then his wife's separate estate would be liable to support him. Lopes, J., however, held that the interest was too remote, and that the action could not be maintained.

If A. sells to B. a carriage on the hire-purchase system, i. e., on an agreement that B. is to pay the price of the carriage by three instalments, and A. undertakes during the currency of the instalments to keep the carriage in repair, is A. bound to make good an injury to the carriage caused by accident before the time for payment of all the instalments has passed by?

Hart v. Wright.

(T. 538.)

A. is, under the agreement, bound to make good such an injury, and not merely to do such repairs to the carriage as may be rendered necessary by fair wear and tear.

(6 Fisher, p. 1769.)

Is a person who has served as a general clerk in a solicitor's office for ten years entitled, under sect. 4 of 23 & 24 Vict. c. 127, to serve three (instead of five) years under articles of clerkship, in a case where he had commenced such ten years' antecedent service at the age of thirteen?

James, E. R., Re.

(T. 508; L. J. 116.)

The Law Society refused to admit Mr. James, who had been articled under the above circumstances for three years only, for his Intermediate Examination after a service of one and-a-half

years, on the ground that the antecedent service of ten years was not *bonâ fide* and active employ in the business of a solicitor's office, and that consequently his case did not fall within sect. 4 of the Act of 1860. Mr. James appealed to the High Court to reverse the decision of the Society, but it was held that no appeal would lie, the matter being one upon which the Law Society had exclusive jurisdiction.

(6 Fisher, p. 1779.)

Can an executor retain a debt due to him so as to prejudice the payment of a call made against his testator as a contributory of a company in liquidation, in respect of which a "balance order" has been made by the Chancery Division?

International Medical Hydropathic Company v. Hawes.

(S. J. 538; L. J. 110.)

Before the death of A. B. a company, in which he was a shareholder, was ordered to be wound up, and A. B.'s name was placed on the list of contributories, and a call was made on A. B. for 225*l.*, and an order made against him for payment thereof. After A. B.'s death, the call not having been paid, the liquidator commenced an action against C. D., the executor of A. B., to administer A. B.'s estate, and a "balance order" was obtained against C. D. directing him to pay the 225*l.* to the liquidator. A. B.'s estate was insolvent, and C. D. gave the liquidator notice that he would retain out of the assets a debt due to himself of 306*l.* odd. The liquidator contended that the balance order took away the right of retainer, and Bacon, V.-C., so decided. The Court of Appeal, however, considered that the right to retain still remained. Cotton, L. J., said, that had there been no "balance order" the right of retainer could not be questioned; and as the effect of a balance order was merely that the executor was to pay the call "in a due course of administration," the right of retainer remained. The "balance order" was not equivalent to a judgment against the executor: a writ of *fi. fa.* could not be issued upon it. The balance order did not give the liquidator any priority which he had not before, nor did it affect the executor's power to retain his debt. A balance order is only a step towards judgment for administration, and as a judgment for administration did not take away a right of retainer, *à fortiori* a step towards such a judgment did not. Our question is consequently answered in the affirmative.

(3 Fisher, pp. 1646, 1668; Snell, p. 280; Aids to Equity, p. 66.)

Is a landlord liable for damage done to a stranger owing to the premises being out of repair?

Mills v. Temple-West.

(T. 503.)

He is if he let the premises when in a dangerous state, or if he has agreed to do the repairs. In the above case the plaintiff was injured in October, 1883, by a gate on premises belonging to the defendant, but let to a tenant, breaking away from the posts and falling upon him. The premises on which the gate was had been let in 1881, under a written agreement, to a tenant, the agreement being silent as to repairs. From the evidence it appeared that the gate-posts were rotten, and that it was this rotten state of the posts which caused the gate to fall and injure the plaintiff. At the trial the judge held that there was no evidence of liability on the part of the landlord, and entered judgment for the defendant. On application to the Divisional Court, however, it was held that the judgment was wrong; that there was evidence of the landlord's liability, and that the case ought to have been allowed to go to the jury.

(4 Fisher, p. 1677; Shirley, p. 282; Indermaur, p. 381.)

If A. by his will bequeaths a legacy to his wife B., can she claim the legacy if she is, subsequently to the date of the will, divorced from A.?

N. v. M.

(T. 523.)

Chitty, J., decided that as B. sustained the character of wife at the date when the instrument was executed, although she ceased to sustain it at the death of the testator, she was entitled to the legacy, since the date of the will was the date at which the description of the person described as wife was to be ascertained.

(Student's Conveyancing, p. 435.)

If a town agent deliver yearly bills of costs to his client—the country solicitor—at the end of each year relating to various agency matters, must the country solicitor apply to tax each bill within a year of its being delivered, or may he apply within a year of the last bill being delivered?

Nelson, In re.

(T. 507; S. J. 519; L. J. 106.)

Pearson, J., held (and his decision has been upheld by the Court of Appeal) that on an application to tax in such a case the master could only tax those bills which had been delivered within a year of the application to tax. Each bill sent in was a separate bill, and it would be wrong to hold that the separate bills together constituted, for the purpose of taxing, only one bill. This was the rule, even though all the bills delivered might relate to the costs of one action, which had been going on during the whole of the period over which the bills delivered, and of which taxation was sought, extended. "It would be strange," said Cotton, L. J., "if years after the first bill had been delivered taxation could be obtained within twelve months of the delivery of the last bill." Further, the Court considered that the fact that the parties were to one another as principal and agent, did not constitute "special circumstances" justifying a taxation, notwithstanding the lapse of the proper time.

(6 Fisher, p. 1911.)

A. and B. are the executors of C. A. is a creditor of C., but dies without retaining his debt, leaving B. him surviving. D. is A.'s executor. Can D. retain the debt due to A. from C.?

Norton v. Compton.

(W. N. 123; S. J. 539; L. J. 110.)

It is laid down in the text books that an executor's executor can retain; but as the right of retainer only applies to assets of the testator which the executor has in his hands, it follows that an executor's executor can only retain when he has the right to recover the assets of the original executor. This right he has not in a case where there is a co-executor who survives; and, therefore, in the case stated the Court of Appeal unhesitatingly held (reversing the decision of Pearson, J., and upsetting the decision on this point in *Wilson* v. *Coxwell*, L. R., 23 Ch. D. 764) that A.'s executor could not retain, since he had no right to handle the assets of C., which ought to be paid into the hands of B., the surviving executor. A. not having retained the right of retainer was lost; there was not in D. the union of the two characters—executor and creditor—which must exist to give the right to retain. This follows the principle laid down in *Hopton* v. *Dryden* (Prec. in Ch. p. 179).

(3 Fisher, p. 1646; Snell, p. 280; Aids to Equity, p. 66; and see the remarks on *Wilson* v. *Coxwell* and *Hopton* v. *Dryden*, in 2 Law Notes, p. 369.)

Are counsel's briefs and other papers which are privileged from production for the purposes of an action also privileged for the purposes of a subsequent action by the same plaintiff against another defendant?

Pearce v. Forster.

(T. 502.)

Most certainly they are, decided the Court of Appeal—to hold the contrary would be to prevent all free communication between solicitor and client and counsel and client.

(3 Fisher, p. 216; Indermaur, p. 448.)

If A. has mortgaged certain premises to B., and subsequently let the premises to C., who puts up trade fixtures, can B., under his power of sale, sell the premises with the fixtures?

Saunders v. Davis.

(T. 499.)

He cannot do so. Had B. let the premises to C., or had C. attorned tenant to B., B. could not have sold the trade fixtures erected by C.; and there was no reason or equity, the Divisional Court said, in holding that the mortgagee was to be in any better position, because, though not letting the premises himself he stood by and let the mortgagor do so.

(3 Fisher, p. 1827; Student's Conveyancing, pp. 218, 225; Fisher's Mortgages, pp. 20, 21.)

Is a verbal agreement between solicitor and client, whereby the solicitor agrees to accept a lump sum for past costs, binding?

Re Russell, Son & Scott.

(W. N. 123; L. J. 111.)

Kay, J., after referring to sect. 4 of the Solicitors' Act, 1870, said that such an agreement was not binding. That section required not only contracts for future costs between solicitor and client to be in writing, but contracts for past

costs also. It was necessary that writing be used in order that the contract might be subject to the revision placed upon it by the section; and case law (*Re Lewis*, L. R., 1 Q. B. Div. 724) required such a contract to be signed by both parties.

(6 Fisher, p. 1906.)

Are the words "The Lawford" applied to lawn tennis bats "fancy" words, so as to admit of registration as a trade mark under sect. 64 of the Patents Act, 1883?

Slazenger v. Malins.

(W. N. 124; S. J. 517; L. J. 115.)

Lawford is the name of a celebrated lawn tennis player, and the plaintiff had called his tennis bats "The Lawford," and registered the name as a trade mark. The defendant sold his tennis bats as "Lawford." The plaintiff applied for an injunction, on the ground that having registered his mark he had an exclusive right to the use of the word "Lawford." The defendant contended that the words "The Lawford" were not "fancy," and so ought not to have been registered; but Pearson, J., considered that "The Lawford" was a fancy expression not in common use, and granted the injunction.

(Wms. P. P., p. 417.)

What constitutes "a fancy word not in common use" to satisfy sect. 64 of the Patents Act, 1883?

The Trade Mark "Alpine," In re.

(S. J. 300; L. J. 106.)

Chitty, J., said that the word must be of a character as to strike the mind as novel—there must be some fancy; and such words as Royal, Imperial, Republican, would not be permitted to be registered as a trade mark. The word "Alpine" was a fancy word not in common use as applied to cotton embroidery, and could be registered. To make a word "fancy" it could not be supposed that the legislature intended the imagination of manufacturers to be exercised in inventing new words; whether the word sought to be registered as a trade mark was newly invented or a word fancifully applied was immaterial, so long as its application created a distinction.

(Wms. P. P., p. 417.)

Are sub-sections 3 and 4 of section 1 of the Married Women's Property Act, 1882, retrospective?

Turnbull v. Forman.

(W. N. 126; S. J. 537.)

By these sub-sections, as our readers are aware, the contract of a married woman is presumed to bind her separate estate, and not only that which she has at the time of the contract, but that subsequently acquired; and in the above case it was for the Court of Appeal to say whether the terms of these sub-sections were sufficiently wide to include a contract made before the 1st January, 1883, by a married woman, so as to make it bind separate property acquired by her on or after that date. The Court decided that a contract made before the 1st January, 1883, by a married woman was not within the Act of 1882, but was governed by the decision of *Pike* v. *Fitzgibbon*, and consequently only affected that separate property which the woman had at the date of contract free from restraint, and which she still possessed at the date of judgment free from restraint, and that such a contract would not be held to bind after-acquired property, even though acquired on or after 1st January, 1883. Brett, M. R., said, that it was a well-known rule of construction that unless there are clear words to the contrary an Act of Parliament affecting rights is to be construed prospectively only. Consequently our question receives a negative answer.

(Snell, p. 363; Aids to Equity, p. 105; and in Thicknesse's Law of Husband and Wife, or other book on Married Women's Property Acts, or as note to sect. 1, sub-sect. 4.)

Is there a copyright in the title of a newspaper?

Walter v. Emmott.

(L. J. 115.)

The proprietors of the Times have for a long time published three times a week a paper called the "Mail," which is practically a reprint in a condensed form of the Times. The price is 2*d.* The defendant recently started a morning paper and called it the "Morning Mail," and sold it at one halfpenny per copy. The Times proprietors sought an injunction to stop the defendant using the name "Mail" in connection with his halfpenny paper. Pearson, J., refused the injunction, saying that the mere similarity in names was not sufficient ground to induce the Court to interfere. The plaintiff to succeed must show that deception was

likely to take place—that is, that the public would buy the defendant's paper thinking it the plaintiff's, and this he did not think likely in the case before him, looking to the difference in time of publication, price, character and description of reading. Clearly, therefore, there is no copyright in the title to a paper.

(2 Fisher, p. 1094; Snell, p. 592; Aids to Equity, p. 166.)

Is a promise by A. in writing "to pay to B. on his signing a lease of certain premises the sum of 150l." a promissory note within the meaning of section 49 of the Stamp Act, 1870?

Yeo v. Dawe.

(T. 506; S. J. 490.)

This is a very important question, since, if the document constitutes a promissory note (and not an agreement), it cannot be stamped after its execution, owing to sect. 53 of the Stamp Act, 1870. By sect. 49 of that Act a promissory note includes "a note promising the payment of any sum of money upon any condition or contingency which may or may not be performed or happen," a definition sufficiently wide to include the document above referred to. However, the Court of Appeal said that the document was neither given nor accepted as a promissory note, but as an agreement, and it was not in fact a promissory note; and though within the words of the Stamp Act, yet it was not a note within the meaning of that Act. Consequently a negative answer is afforded to our question.

(6 Fisher, p. 702.)

III.—PRACTICE CASES.

[The references under Snow, Stoney and Student's Practice, are respectively made to the last editions of Snow and Winstanley's Annual Practice, Stoney and Andrews' Judicature Practice, and Gibson and McLean's Student's Practice. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

In what form should a judgment for dissolution of partnership be, when the dissolution is decreed owing to the misconduct of the defendant?

Bindloss v. Saunders.

(L. J. 114.)

Kay, J., directed the judgment to be to the following effect: "Declare the dissolution of the partnership as from the date of the judgment (not of the writ); inquire whether anything and what was due to the defendant in respect of the capital or profits of the partnership at that date; if nothing should be found due to the defendant, inquire whether anything was due from him; inquire what sum would at the date of the judgment represent the defendant's interest if the partnership were sold as a going concern, after deducting all charges thereon and all liabilities of the business; if nothing were found due to the defendant, or otherwise, on payment by the plaintiff to the defendant within a time to be fixed by the judge in chambers of what should be found due to him under the inquiries, declare that the business belonged to the plaintiff exclusively. Liberty to apply. The defendant to pay the costs up to, and including, the trial."

(Add in Student's Practice, as sect. 7a on p. 288.)

Can the Court appoint a receiver of the equitable interest in property in this country belonging to a defaulting trustee, against whom judgment has been obtained in a case where, owing to the trustee having gone abroad, it is not possible to issue a writ of attachment against him?

Coney, In re, Coney v. Bennett.

(W. N. 129; L. J. 115; S. J. 555.)

Chitty, J., considered that under sect. 25 of the Judicature Act, 1873 (sub-sect. 8), and by Ord. XLII. r. 28 of the Judicature Rules, 1883, he had jurisdiction to appoint a receiver of such property.

(Snow, p. 497; Stoney, p. 350; Student's Practice, p. 180; Ord. XLII. r. 28.)

Must the affidavit in support of an application for a foreclosure decree absolute be made by the mortgagee?

Frith v. Cooke.

(W. N. 129; S. J. 556; L. J. 115.)

Not necessarily, Chitty, J., decided. The affidavit may be made by the person attending on behalf of the mortgagee, and it will be sufficient if it shows that the attendance was made by the deponent at the time named, and that the mortgagor did not attend to pay the money.

(Student's Practice, p. 285.)

Can a party to an action, who has made an affidavit in the cause, refuse to attend for cross-examination until his or her expenses of attending are paid?

Mansel v. Clanricarde.

(S. J. 556; L. J. 114.)

In the above case an order had been made allowing witnesses who had made affidavits in support of a motion by the plaintiff to attend before an examiner for cross-examination and re-examination. Under this order the plaintiff was subpœnaed, no conduct-money was tendered and she did not attend. The defendants, thereupon, asked that she might be ordered to attend at her own expense, and the question we have set out above arose. Kay, J., decided that the provisions of Ord. XXXVIII. r. 28, which are to the effect that a party producing a deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance, applied not only to the trial of the action, but, under the wording of Ord. XXXVII. r. 22, to cross-examination at any stage; and consequently our question is answered in the negative.

(Snow, p. 470; Stoney, p. 334; Student's Practice, p. 188; Ord. XXXVIII. r. 28.)

If an action is brought to recover moneys on a policy of assurance, can the plaintiff insist on a jury under Ord. XXXVI. r. 6?

Trower v. Law Life Assurance Society.

(T. 500; S. J. 516.)

Yes, decided the Court of Appeal; and on an application for a jury in such a case the master has no discretion, but is bound, under Rule 6 of Ord. XXXVI., to make the order asked for. Such an action does not fall within Rule 4 of the same Order, since such an action would not have been entertained by the Chancery Court prior to the Judicature Practice coming into operation.

(Snow, p. 423; Stoney, p. 301; Gibson, p. 200; Ord. XXXVI. r. 6.)

IV.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules, 1883, should enter the case as a note to the section or rule mentioned.]

Does an order of discharge on bankruptcy free the bankrupt from liability to pay alimony ordered before the bankruptcy to be paid by him to his wife?

Linton v. Linton.

(W. N. 117; S. J. 501.)

In other words, are future payments of monthly or weekly alimony "debts or liabilities proveable" within the meaning of sect. 37 of the Act of 1883? The Court of Appeal unhesitatingly held that such payments cannot be proved for, and therefore are not barred by the order of discharge. The bankrupt would be as well able to make the payments after as before his discharge. The obligation to pay the alimony might be stopped at any time by the Divorce Court, or the obligation might by that Court be increased or diminished, consequently the future payments could not be valued for the purpose of proof in bankruptcy. Brett, M. R., said, that "it would be a strange thing if by an accidental oversight of the legislature the bankrupt could by a self-imposed bankruptcy escape from the obligation cast upon him by the Divorce Court."

(Robson, p. 714; Y.-Lee, p. 156; Williams, p. 95; Baldwin, p. 324; Ringwood, p. 131.)

Are costs of the solicitors of an executor incurred before administration order made under sect. 125 of the Bankruptcy Act, 1883, for obtaining probate valuations, and generally ascertaining the position of the deceased's affairs, a preferential debt within the meaning of sub-sect. 7 of the above section?

Turnbull, George, In re.

(S. J. 557.)

The Board of Trade considered that they were not, and directed the official receiver only to allow as a preferential debt the actual costs of obtaining probate, fees of the Probate Court and costs of obtaining valuations for probate, considering that the term "testamentary expenses" only included the bare costs of probate and not the ordinary solicitor's costs. The County Court judge, however, without hesitation, held that the Board of Trade's decision was untenable, and that all the usual costs which would be allowed under the head of "testamentary expenses" in an adminis-

tration action, constituted a preferential debt, and must be paid first; and consequently an affirmative answer is afforded to our question.

(Robson, p. 419; Y-Lee, p. 541; Williams, p. 330; Baldwin, p. 333; Ringwood, p. 141; sect. 125.)

V.—PROBATE, DIVORCE & ADMIRALTY CASES.

[The references under Dixon, Coote, Dixon's Div., Browne, Roscoe, Smith's Ad., Smith's Ecc. and Harrison are respectively made to the last editions of Dixon's Probate, Coote's Probate, Dixon's Divorce, Browne's Divorce, Roscoe's Admiralty, Smith's Admiralty, Smith's Ecclesiastical Law and Harrison's Probate and Divorce.]

Can a sequestrator of a living spend a sum for repairs of a rectory-house and glebe premises beyond what is certified to be necessary in a surveyor's report made under the provisions of the Ecclesiastical Dilapidations Act, 1871?

Kimber v. Paravicini.

(T. 513; W. N. 124; L. J. 112.)

The diocesan surveyor reported that 140*l.* was the sum required for repairs. The surveyor having resigned, the sequestrator visited the living and found that much more than 140*l.* was necessary to do the required repairs, and expended 850*l.* thereon. This sum it was sought to make the incumbent pay; but the Divisional Court held that the sequestrator had no power to spend more than the 140*l.*, and that for the difference the incumbent was not liable. Our question is consequently answered negatively.

(Smith's Ecc., p. 78.)

What amounts to legal "cruelty" sufficient to maintain a suit for judicial separation?

Wodehouse v. Wodehouse.

(S. J. 539.)

Actual physical violence is, of course, not necessary, for "moral" cruelty has often been held sufficient to support a petition for judicial separation. At the same time the Court of Appeal said in the above case that every family quarrel must not be regarded as amounting to cruelty. To enable the Court to interfere, the moral cruelty must be of such a character that there must be a probability that continued cohabitation would be either unsafe or attended with real injury to the health of the person alleging cruelty. In the above case, on one occasion the husband, whose wife was in a delicate state of health and confined to her bed, left her without any money, and ordered the servant not to attend her, and not to supply her with any food. The wife thereupon left her husband's house and proceeded for a judicial separation, relying on this particular act on the husband's part as cruelty sufficient to support her petition; but the Court of Appeal considered that the facts proved did not amount to legal cruelty.

(4 Fisher, p. 136; Harrison, p. 123.)

ERRATA.

Colledge v. Armstrong.

The head note to this case given in our June Number (see *ante*, p. 155) was defective. It should have run thus:—

Will the Court compel a plaintiff who, though permanently resident abroad, is temporarily resident here at the time of suing, to give security for costs?

Inderwick v. Leach.

Instead of Court of Appeal, we ought to have stated Divisional Court (see *ante*, p. 150).

BANKRUPTCY RULE, JUNE, 1885.

THE DEBTORS ACT, 1869.

Additional Regulation with respect to Applications for Leave to issue Judgment Summonses under Sect. 5 of the Debtors Act, 1869.

Where the amount remaining due on a judgment of the High Court exceeds fifty pounds, and the judgment debtor resides or carries on business within the London Bankruptcy District, a summons under section 5 of the Debtors Act, 1869, may be issued out of the High Court without further order.

CURIOUS CASE.

No. 5.—INFANTILE BAILMENTS.

Well indeed did one of the daily papers remark the other day that the average layman might wade carefully and laboriously through the reports of *Reg.* v. *Macdonald* and at the end merely feel astonishment, combined with unmitigated contempt,

that it should be necessary for nearly all the judges to meet in solemn conclave to settle so simple a point as the criminal responsibility of an infant for having sold furniture which he had bought on the hire system, and in respect of which instalments were still due. Not only the average layman, but the average lawyer with little criminal practice, would at once conclude that there could be no doubt about such infant being guilty of larceny. Now, to all those who still think that there was nothing at all in the case, and that the law must be in a pretty state if such an ordinary point as this is not well established and settled, we will put in as plain and untechnical phraseology as possible the difficulties which presented themselves to the judges.

Firstly, then, be it remembered that the Courts have wisely laid down as established law that an infant shall not be liable on any contract he may enter into except for necessaries. So much the law, meaning by that the judges of olden time, established. Further, in 1874, the legislature stepped in, and after reproving the law for permitting infants to ratify and confirm, when they came of age, contracts entered into by them whilst under age, enacted very wisely that any contract made by an infant whilst under age, should be incapable of ratification or confirmation in any way. So much by way of preface. Now to advance another step nearer the mountain of our difficulties. It is by the law also established that a man who gets possession of personal chattels such as furniture on the "hire system" is, in respect of such chattels till paid for, in the position of a bailee, and the contract under which he gets the goods is a bailment. But here, exclaims our reader, are technical words: what is a bailment and what is a bailee? The answer to this question brings us at once to the foot of our mountain of difficulty; let us pause to breathe before we commence the ascent.

A bailment is by all the text-books learnedly defined as the delivery of goods in trust for some special object or purpose, and upon a contract express or implied to conform to the object or purpose of the trust; the person to whom the goods are so delivered is the "bailee." To analyze this definition is for the purpose of our article not now necessary: sufficient is it to note a bailment is a contract; an infant is not liable on a contract, therefore an infant is not liable on a bailment; and, following on, an infant cannot be liable for having sold goods the subject of such bailment. Not civilly liable very probably, observes an intelligent reader, but what has all this to do with his criminal liability? he is surely guilty of theft, or in technical language, larceny?

At this point of our mountain ascent let us halt to refresh our minds with retrospective contemplation of difficulties overcome: we have before us the criminal technicalities connected with larceny and fraudulent bailees. That most learned of quibblers, Lord Coke, is responsible for many of our nineteenth century difficulties. It pleased him, centuries ago, to lay down that to constitute larceny there must exist "an intent to steal when it (*i. e.*, the goods) cometh to his hands or possession, for if he hath the possession of it once lawfully, though he hath '*animum furandi*' afterwards, and carrieth it away, it is no larceny." This rule used formerly to exist in connection with the finding of any chattel, the improper conversion of which subsequent to the finding was not larceny: but this is now to some extent ignored. But as to bailments the rule still exists, and at common law a bailee "who getteth possession lawfully" cannot, if he afterwards hath *animum furandi*, be guilty of larceny. At common law we said. Of course fraudulent bailees are liable to the criminal law, but they have been specially made so by the Fraudulent Bailees Act. Now are the rugged rocks and yawning chasms of our mountain fully realized.

The infant got possession of the goods lawfully; the subsequent *animus furandi* did not make it larceny; a bailment is a contract, an infant is not liable on any contract except for necessaries, *ergo* he cannot be a bailee, and therefore he cannot be a fraudulent bailee within the Act.

Here, then, we face *the* obstacle, *the* difficulty. Who will now say the full bench of judges was not necessary to overcome this?

To briefly glance at the subtleties of argument reveals even further difficulties. Thus, assume there was no valid contract; the infant did not come into possession of the goods lawfully; that being so, was he not guilty of larceny? Take another line of argument. The rule of law and Act of 1874, already referred to, only took away an infant's civil liability on contracts; for torts an infant, *doli capax*, is responsible; the Act was intended only to affect contracts civilly, there is nothing in the Act to take away an infant's criminal liability; the statute, as one learned judge suggested, does not enable an infant to thieve. On the other hand, all this may be true, but does it not conflict with a well-established principle of law that infants are liable for torts, provided they are wholly uncon-

nected with contract? this tort obviously springs from contract; to hold him criminally liable is to impinge on this rule; to impinge on this rule is to make an inroad on a principle established by law, ratified by the Legislature, that infants shall not in any way be liable on contracts, except for necessaries. The repetition of this word opens up a further line of argument. Was not this bailment a contract respecting necessaries? This point suggested itself to Mr. Justice Cave, whose pertinent interpolations completely silenced the counsel: in this case we assume the goods were not necessaries, for the question of liability on this head was not seriously raised, only incidentally mentioned; we would, as the counsel answered Mr. Justice Cave, prefer to wait until this point does absolutely occur.

We have purposely abstained from quoting decisions referred to at the hearing as likely only to confuse. It is greatly to be regretted that the judges did not see fit to give exhaustive judgments. Their lordships contented themselves with hearing counsel, suggesting points and generally discussing, after which they retired, and Lord Chief Justice Coleridge came back and announced that the majority of the judges considered the conviction was right.

But what rule or principle of law can we deduce for future guidance? Unaided by judgments it is difficult to say. Apparently only this, that an infant may be liable as a fraudulent bailee; then an infant is criminally liable on a contract? This may be so, we cannot tell; from judicial observations it seems that the bailment is not for all purposes absolutely void. How impotent conclusion to weighty argument!

THE JUNE FINAL PASS.

The same defects, the same complaints, the same acts of commission and omission. Over and over again, under the headings "Notes on the Final," and "Notes on the Intermediate," we have drawn attention to the fact that the examinations need improvement in various ways. We do not, of course, for a moment hope, that just because we say the examinations are capable of improvement, the Law Society will improve them; we do not flatter ourselves we possess so much influence: moreover, the question is one of opinion,—we may consider there is room for improvement, the Law Society may consider they are perfect. We will, therefore, just call attention to a few points in which the examinations, we maintain, are not as they ought to be, and then leave the public to judge between us.

In the first place, then, we wish to remind people that the Law Society is charged by statute with the duty of ascertaining whether applicants for the legal profession are properly qualified, and are fit and proper persons to act as solicitors; the Society is with this object allowed to charge a fee to each candidate for examination, the intention of the Legislature, no doubt, being that it was only just that the Society should be freed from any expense in carrying out a public duty.

The fees, therefore, in principle are unobjectionable; the professed object is right that the candidate for admission should himself meet all expenses he causes. In practice how does it work? The Society in its own accounts admits a profit, and a very considerable profit, from examination fees. To this it may be urged there is no objection, provided that they give the candidates every possible comfort and convenience at the examinations. But this, we have no hesitation in saying, from what candidates tell us, they do not do.

The fault appears to be that the examination hall is not large enough to contain all the candidates; some, therefore, are put in the library, some in the club premises: to this, of course, there is no reasonable objection; but the arrangement is at best a makeshift—the desks, not properly fastened to the floor, shake, the inkpots threaten destruction to well-thought-out answers, and the candidate's mind is distracted. But those candidates who find themselves in either hall, library, or club-room, may congratulate themselves that they are in Paradise—we, of course, speak comparatively, no man can be strictly described as in Paradise when in an examination hall. Blessed, indeed, are they whose names come in the early half of the alphabet; cursed, indeed, are they whose names come low down in the alphabet. As the song has it in the "Mikado," "Why should undeserving B be so happy, and meritorious X so miserable?" But so it is. Every candidate pays the same fee. Those of high standing in the alphabet are treated with proper respect, those low down are sent out of the Society's premises altogether, and examined in some unlet rooms in a new building at the top of Chancery Lane. Now for some complaints of meritorious miserable X:—The desk was not properly fastened to the floor; three had to sit at one desk, when one man blotted his answers the other two had to cease writing. One man had an ink-

stand upset over his trousers; another had his elbow jogged. At one winter examination there were no fires in the room, and more than one candidate sat with his overcoat on. Now it will be at once admitted that candidates for examination should not be subjected to these inconveniences: it is so obvious that a man about to put a severe strain on his mental powers should not be harassed by trivial and petty inconveniences of this character. The authorities only require to have these matters represented to them to have them altered. Who, then, is to make the representation? Not the candidates. Once out of the room, they are too pleased to trouble themselves to see these matters remedied for posterity. The duty, we know, lies on us, and not only on us, but on the legal press generally. From time to time we have in another column drawn attention to these things; the result at present is nil.

So much for this portion of our grumble. We have now to lodge complaint against the gentlemen who are supposed to see that no "cribbing" goes on, and to generally keep the room quiet and orderly. From different candidates we have the following: It is no uncommon thing for these inspectors to congregate together for a sociable chat; to walk needlessly up and down; to give misleading and often erroneous explanations of imperfectly worded questions; while as to the actual supervision exercised, we can only say that we know of too many instances of successful "cribbing."

We will now direct our indictment to another and distinct cause of complaint: the nature and form of some of the questions set. Let us take the papers at the "Final Pass" in order. First we have the equity paper; for this paper we have nothing but praise; it was a well-set and searching test of a man's knowledge, and will effectually prevent any man passing who has not done good and honest work: to one question, however, we must take objection. To ask a candidate to what branch of the High Court the care and custody of lunatics is committed, is not a fair question. To no branch of the High Court at all. The care and custody of lunatics is given to such judges as the Queen may by sign manual appoint. Why frame the question in a misleading manner? and, further, when writers disagree, why ask a candidate to what tribunal appeals in lunacy lie? The common law paper causes us much dissatisfaction. The first question, as to the foundations of the *lex non scripta*, is fit only for an Intermediate paper. The second question is on a subject not usually determined or administered in the Queen's Bench Division at all. The fourth question is the resort of every examiner hard up for a question; it involves a mere matter of memory: When should plaintiffs give notice of trial? Surely the common law paper might appear for some time to come without the subject of the fifth question being touched on again: interpleader is all very well in its way, but one can have too much interpleader. The sixth question is an Intermediate question; moreover, the same point was involved in a question asked at the June Examination last year. The seventh question touches again on the Employers' Liability Act: surely the common law examiner does not think this is the only important common law statute which has recently been passed; at nearly every examination there is a question on this Act. The tenth question was, for good men, childish in its simplicity; for men of average ability, it was simply bothering; certainly, for neither was it a test of their principles or practice of common law. The eleventh question, a difficult point on the effect of compulsory purchase by a railway company, the case law on which does not appear yet to be definitively settled, should not have appeared in a Pass paper at all. The fourteenth question asked for another "time point;" and the last question of all was the most unsatisfactory of a most unsatisfactory paper. What possible test of a man's knowledge of principle or procedure in common law is it to ask him to draw a defendant's bill of costs up to notice of trial for taxation by plaintiff, &c.? Only one reason for this most extraordinary question suggests itself to our minds. The examiner wanted to find who, among the candidates, were ten-year men, for, of course, they and they only revelled in such a question.

Now we come to the conveyancing paper. A good set of questions; only faulty in two respects: the thirty-fifth question was practically the same as the twenty-third in the common law paper—this should not be, examiners should compare notes; and the last question, on the provisions of the Lands Clauses Act—it is simply very unfair to expect a Pass candidate to possess such an intimate knowledge of that statute as to be able to answer the point involved.

With the bankruptcy paper we have no fault to find. In the criminal paper, however, we find some very great faults. The second question is very unfair; if the candidate did not know false pre-

tences to be a misdemeanor, he could not answer the question at all. The fourth question, for one thing, was not accurately framed, and, moreover, was a very weak question; and the next question was, we fear, purposely misleading. In the sixth question, the word "feloniously" should not have been inserted. Feloniously receiving, of course, shows that that particular receiving was a felony, because the substantive crime was a felony; we are willing to credit the examiner that this was an accidental slip, and not purposely inserted to mislead. The ninth question ought not to have been asked. We do not believe in the examination value of asking a man either to draw a bill of costs, or to draw a summons for battery.

We confidently appeal to the verdict of our readers; those who have not passed these examinations, of course, are too interested to be able to express an opinion. Until they pass, they think, and think naturally enough, that no good thing can possibly come out of an examiner. But appeal to the common sense of any average solicitor; do not ask him his opinion as to the difficulty or simplicity of any particular set of papers, he is no competent judge; to many able practising solicitors easy examination questions are conundrums, for they have not been reading for them, and difficult ones simplicity itself, for they know not the difficulties involved; therefore, do not say to such a man, Do you think this an easy or difficult paper? but ask him to consider whether the complaints we have been making are well grounded.

Once more, we say, these errors must be altered. Candidates must be made comfortable; questions must be properly framed; greater care taken in their wording; in fact, things must be altered. We feel the criticism ungracious; sympathy is more due to us for undertaking the unpleasant task of pointing out faults in others than it is due to those against whom our criticisms are directed.

HOMICIDE.

III.

(*Continued from p.* 83.)

Another way in which a fatal injury may be sustained by one person through the agency of another, though that other takes no part in the actual infliction of the injury, is where the latter persuades the former to put himself into a position which results in the sustaining of the injury resulting in death. Suppose, for instance, that by acts, words or gestures, A. persuades B. to put himself into a position which results in his death; can A. in any or in all circumstances be said to have killed B.? The aspect of each case may vary with the amount of power existing in B. to judge of the advisability or otherwise of adopting A.'s persuasions. For instance, let us suppose in one case that A. invites B., a blind man, to take steps in a certain direction; B. does so, and in consequence falls over a precipice and is killed. Here undoubtedly A. has killed B. We do not think A. could excuse himself from responsibility on the ground that B. was endowed with the faculty of reasoning, and, having perfect freedom of action, could follow the invitation given or not, as he liked. Having offered the persuasion, he is responsible for its results; he must have known that B. could not have exercised a proper independent judgment in arriving at the conclusion whether to adopt the persuasion or not, the fact of the existence of danger not being known to him; he is as much responsible for his death as if he had led him to the edge of the precipice and allowed him to step over.

But on the other hand, let us suppose that the persuasion is made to a person who is in full possession of all his faculties, and is quite competent to exercise a sound, independent judgment as to whether he shall adopt it or not. Suppose, for instance, that A. persuades B. to commit suicide, and B. does so; is A. here responsible for B.'s death? In the absence of anything to show that B.'s judgment was affected by any influence held over him by A., we do not think that a killing could be said to have been effected in this case. There would be no link in the chain of causes connecting A. with the death, for there would be a break between the persuasion and its effect on B. It would be an inquiry of too subtle a nature to attempt to estimate the secret influence which one mind has over another; but if A. was a person whose influence over B. in ordinary matters could be shown to be of such a nature that any suggestion from him would have a preponderating effect on the exercise of his judgment by B., and prevent it from being freely and perfectly independently exercised, we think that even in a legal sense A. could be said to have killed B. This conclusion derives some degree of support from cases showing that if A. and B. agree together to commit suicide, and they make the attempt, with the result that A. is killed but

B. survives, then B. may be guilty of the murder of A. Thus, in *R.* v. *Dyson* (see Fisher's Digest), on the indictment of a man for the murder of a woman by drowning, it being shown that they both went to the water for the purpose of drowning themselves, the judges who considered the case were clear that, if the deceased threw herself into the water by the encouragement of the man, and because she thought he had set her the example in pursuance of their previous agreement, he was guilty of murder. And the case of *R.* v. *Alison* (8 Car. & P. 104) was decided upon the same principle.

Then again cases might be imagined where words spoken by A. might not amount to a persuasion at all, but nevertheless might have the effect of causing a person to act on them, and, acting on them, to meet his death. Thus, suppose a man (whether maliciously or not it matters not, for, as we said before, the question of intention has no bearing in arriving at the conclusion as to what amounts to a mere killing) cries out "Fire!" in a crowded theatre, and the result is that there is a panic and a crush, and B. is trampled to death. Can A. be said, by the raising of the alarm, to have killed B.? Here it is obvious that there are many contingencies to be taken into consideration: A. might plead in excuse that there was by no means any necessary reason that a panic should follow in consequence of his cry; that it was quite possible that the people might have quitted the theatre in a quiet and orderly manner; that even if a panic did ensue, it would not have been bound to result in the death of B.; that B.'s death might have been caused in the crush solely owing to his own negligence. But taking into consideration the rule of law that every one must be presumed to have foreseen the reasonable and probable consequences of his acts, we cannot doubt but that A. would in such a case be responsible for the death, and would furthermore be guilty of murder, if it could be made out that he raised the alarm with malicious intent, or of manslaughter if an unreasonable amount of negligence could be shown. The case of *R.* v. *Martin* (L. R., 8 Q. B. D. 54) is instructive of this point. There indeed the crime charged was not homicide but the infliction of grievous bodily harm, but the facts, which were as follows, are relevant. Shortly before the conclusion of a performance at a theatre, M., with the intention and result of causing terror in the minds of persons leaving the theatre, put out the lights on a staircase leading to the exit, and with the design and result of creating an obstruction put an iron bar across the doorway. On the lights being extinguished a panic ensued, and many persons were injured by being forced against the iron bar:—It was held that M. must be taken to have intended the natural consequences of what he did, and was properly convicted; and the case was compared to that of a man who unlawfully fires a gun among a crowd who would be guilty of murder if one were killed. Here, had any person been killed in the panic, it is clear M. would legally have been held responsible for killing him.

In all the above cases the agent we have supposed as having been used for the purpose of killing has been one either not endowed with life, or possessed of no freedom of will, of no power of deliberation as to whether or no to carry on the chain of causes. But if the agent chosen to effect the killing be a human being, here it is evident that cases of the utmost complication must occur. By "human being" we mean of course a person who has full use of his reasoning faculties, and is capable of and has the opportunity of exercising an independent judgment. For if A. seize B.'s arm and therewith strike C. and inflict a mortal wound it is clear that A. is as much the cause of C.'s death as if he had used his own hand; so also if B. were an idiot or a lunatic, or incapable of exercising reasoning powers by reason of infancy or other disability, the case would be the same. But what is the position of A. when B. is fully capable of and has full opportunity of calculating the nature of his act? A case where A. gives B. poison to administer to C. without telling him it is poison, and where he did not know and had no reason to suspect it was poison, would clearly no more diminish A.'s responsibility than if with his own hands he were to set the poison before C. and take the chance of his taking it or not. And again if A. compels B. to kill C. by threats of such a nature that B. is left under the impression (which absorbs all his powers of independent thought and action) that his own life will be sacrificed unless he complies with A.'s orders, A. cannot excuse himself from complicity in the death of C. if B. kills him on the ground that B. was not justified in yielding to his fear, and might have protected himself against any threatened consequences by applying to a Court of law; B. would no doubt share in A.'s responsibility; for it is said by Lord Hale, that a person in such a situation should rather die him-

self than kill an innocent person; but this does not in any way alter or diminish A.'s responsibility for the killing.

Nor can there be much doubt as to his responsibility where he hires B. as an assassin for the express purpose of killing C., or where A. and B. agree together to kill C., and B. is the person whose hand strikes the blow which proves fatal. Here indeed, if A. is not present on the scene, it could not be said that he actually killed C., and he would not at law be recognised as a principal in the crime unless he was near enough to the place where the deed was done to lend help to B. or to encourage him with the expectation of help, when he would be what is called a principal in the second degree, but he would be an accessory before the fact, and share in B.'s guilt and punishment.

But suppose A. does not expressly counsel the killing of C., but merely in B.'s hearing expresses a general wish that he could get rid of C., or expresses vehement dislike for him, or hints how greatly he would profit by his death, and B., to ingratiate himself with A., goes away and kills C., can A. be said in any way to be the cause of C.'s death? Morally speaking he would find it hard to excuse himself from responsibility, but we do not think it would legally amount to a killing. It would be too much like entailing on A. the consequences of the acts of another, nor could it be said in such a case that A. had caused B. to kill C., and it would be unfair to hold a man responsible for effects springing so remotely from what may be a hasty and unconsidered expression of his sentiments which he was, perhaps, far from actually meaning. But if the circumstances showed that the words or hints used by A. were more than mere expressions of his sentiments, and that they could be construed as being an indirect method of directing or counselling B. to effect the murder, there is no doubt that A. would then so connect himself with the immediate cause of C.'s death as to become responsible for it, and become at least an accessory before the fact. And the case against him would of course be the stronger if B. had mentioned or hinted at, or had proposed to put C. to death, and he, A., in any way expressed assent to it or approved of, or perhaps even if he did not expressly dissent from it, at least his abstaining from doing so could bear the construction that it was meant to encourage B. It should, however, be mentioned that Lord Hale does not think that a mere tacit acquiescence, or words which amount to a bare permission, would be sufficient to involve A. in B.'s guilt; but with all respect to this eminent authority, we think that the maxim "Silence gives consent" would be applicable with its greatest force in most cases. The mere fact that a person is present at a murder and takes no steps to prevent it, however wrong it may be morally, does not legally attach any portion of the guilt to him, though in the times of the Anglo-Saxons the rule was that every person present at a death was "*particeps criminis.*" (Leg. Alf. S. 26; and see *R.* v. *Taylor*, 44 L. J., M. C. 65, and 1 Hale, P. C. 439.) But in *Lord Mohun's Case*, where A. knowing that B. was at enmity with C. accompanied him to meet C., and B. attacked and killed C., the judges held that the mere knowledge by A. of B.'s animosity and the mere accompanying of B. to meet C. was no crime; but if A. knew that B. intended to kill C., and B. did kill C., then A. was guilty of murder also. (See 12 How. St. Tr. 1034, 1038.)

The case of *R.* v. *Coney* (L. R., 8 Q. B. D. 534) may also be referred to on this point. Here it was held that the mere voluntary presence at a prize fight does not render the persons so present guilty of an assault as aiding and abetting in such fight, but if it is unexplained it may be considered as evidence to go to the jury of such an aiding and abetting. (See also *R.* v. *Young*, 8 C. & P. 644; *R.* v. *Cuddy*, 1 C. & K. 210; and *R.* v. *Murphy*, 6 C. & P. 103.)

Cases might easily be imagined where, of two or more persons taking part in a common purpose, one might be guilty of causing the death of another, while the others would remain innocent of it. This would occur when the common purpose is not to effect a killing, but where in effecting some other purpose on which they are all agreed, one of them effects a killing. Thus, if A. and B. go to rob an orchard, and A. gets up in a tree and B. stands at the gate with a drawn sword and stabs the owner, who tries to arrest him, A. cannot be said to share in the responsibility for the owner's death unless he and B. came with the common resolution to overcome all resistance, though he is in some measure a cause which contributes to the reason which B. had for perpetrating the crime, but one too remote to be taken into consideration (see *Plummer's Case*, Kelyng, 155). But where A. and B. went out to practise rifle shooting, and were so careless in their practice that one of them (A.) by a shot killed C., it was held that B. shared in the responsibility for his death (see *R.* v. *Salmon*,

L. R., 6 Q. B. D. 70). We shall discuss the responsibility of joint perpetrators of a murder more fully in a subsequent paper. Again, where A. authorizes B. to effect an illegal purpose, and B. in doing so kills C., A. is here responsible for the death of C., though he has in no way counselled the killing, just as much as if he had acted without any agent, and had himself brought about the killing. For he who chooses a human agent to accomplish his purposes is answerable for all the consequences which a reasonable man might foresee would probably be entailed in the accomplishment of the purpose. Thus, where A. instigates B. to rob C., and B. does so, and C. resists and is killed by B., here A., though not actually a principal, is at least an accessory before the fact to the murder (see Foster, 370). Nor will it be any excuse for A. to show that his agent made a mistake and committed a different crime from the one which he counselled or commanded. Thus, if A. instruct B. to kill C. and gives him a description of C., and B. then kills D., whom he believes to be C. as he resembles the description so given, here A. is responsible for the killing of D., and will share in the guilt of B. as an accessory before the fact (Foster, 370). But there is some limit to responsibility in cases of this kind: for if the agent instructed to commit one crime commits a different one in no way involved as a necessary incident to the carrying out of his instructions, and not resulting as a probable consequence of them but originating entirely from the agent—then the principal cannot fairly be said to share the responsibility. What we think rather an extreme example of this is given by Foster (p. 369), where he says, if A. instigates B. to kill C., and B. kills D., A. is not an accessory before the fact to the murder of D. We have some hesitation in agreeing with this proposition, for it is clear that if A. had set out in person with the deliberate intention of killing C., and in the course of endeavouring to effect that intention had killed D., he would be guilty of the murder of D. We, however, take Sir M. Foster to mean that the killing of D. by B. is not effected in the endeavour to kill C. but is done by B., so to say, "while acting out of the course of his employment" (see *R.* v. *Michael*, 2 Mood. C. C. 120).

We may now take the case which we mentioned at the beginning of these Articles, which is Mr. Justice Stephen's "prosaic version," as he calls it, of the case of Iago and Othello, and is stated by him as follows: "A. tells B. facts about C. in the hope that the knowledge of these facts will induce B. to murder C., and in order that C. may be murdered. But A. does not advise B. to murder C. B. murders C. accordingly. Does A. in a legal sense contribute to the cause of C.'s death?" Morally speaking, there is no doubt that he has done so. But legally A. would share no responsibility unless there was some evidence to show that he in some way counselled or in some way procured B. to commit the crime. Mr. Justice Stephen thinks that Iago could be punished as an accessory before the fact, as he in Act IV. Scene 1 says, when asked to give poison, "Do it not with poison: strangle her."

(*To be continued.*)

STATUTES FOR STUDENTS.

(*Continued from p.* 111.)

Our next statute for consideration is the famous—

27 Hen. 8, c. 10 (*The Statute of Uses*), A.D. 1535,

a statute which has been called the "Magna Charta" of conveyancing, the provisions of which ought to be thoroughly understood by every student of the law.

Previous to the Statute.

In connection with the history of uses and trusts, the student naturally asks himself the question, "Why did the practice arise of conveying lands to one person to the use of another, instead of conveying directly to the latter, when it was desired to make him the real owner?" To answer this question, it will be necessary to go back to the reign of Edward I., and see what the provisions of the Statutes of Mortmain, passed in that reign, were. (See 7 Edw. 1, c. 1; 13 Edw. 1, c. 32, considered in 3 Law Notes, p. 286.) These statutes prevented lands being conveyed to religious houses on pain of forfeiture thereof to the lord, and it was to evade their provisions that the clergy (the controllers in those days of the Court of Chancery) invented uses. These clergy said that although lands could not be conveyed directly to the religious houses, they might be conveyed to a third person, who would be the legal owner, *to the use* of the religious house; and the Court of Chancery took care to compel the legal owner, called the *feoffee to uses*, to account for the rents and profits to the religious house (the equitable or beneficial owner), called the *cestui que use*. To this device by the clergy, it seems, though the point is by no means certain, so much mystery is there connected with the history of uses, may be traced the origin of uses in this country, and the reason of lands being conveyed to one person to

the use of another, and the consequent distinction between legal and equitable estates. This evasion of the Mortmain Act was soon stopped (see 15 Rich. 2, c. 5, considered in 3 Law Notes, p. 286); but uses being invented, soon took firm root, as they were found useful for many purposes.

A few illustrations may serve to show the advantages which were derived from lands being conveyed to one person to the use of another:—

1. At common law, if lands were conveyed directly to the purchaser of them, he could not dispose of them by will, the right to dispose of the legal estate in lands being unknown, except in some few favoured boroughs where burgage tenure prevailed, until the 32nd year of Henry VIII.'s reign; but if, instead of a direct conveyance, the lands were conveyed to a third person to such uses as the purchaser should appoint, the purchaser, or *cestui que use*, could devise the use, and equity took care to see that the lands were held for the benefit of the devisee.

2. At common law, lands could only be transferred from one person to another by means of a feoffment, with the notorious livery of seisin; but if the lands were conveyed to uses, the *cestui que use* could deal with the beneficial or equitable interest secretly by deed or other instrument operating in equity.

3. At common law, lands escheated and were forfeited on the attainder or conviction of the owner; but if lands were conveyed to uses, and the *cestui que use* became attainted, there was no escheat or forfeiture.

4. At common law, the widow of the owner of lands was entitled to her dower; but widows of the *cestui que use* had no claim to dower.

5. Under the Statute of Elegit (fully considered in 3 Law Notes, p. 377), half the lands of the legal owner could be seized in satisfaction of a judgment obtained against him; but if lands were conveyed to uses, and judgment was obtained against the *cestui que use*, the lands could not be taken.

6. At common law, no estate in lands could be limited after a fee simple; but by means of uses, this could be done.

For these and many other reasons, lands were conveyed to one person (the feoffee to uses), to the use of another (the *cestui que use*).

The feoffee took the legal estate, and had full power at law over the property, to deal with as if he were the actual owner, and his estate was of course liable to all the rules of law; and therefore the *cestui que use*, who had "*jus neque in re neque in rem*," for his estate did not attach to the land itself, but only to the conscience of the legal owner, ran the risk of losing his property through the feoffee's wrongful act; for the latter might dispose of the lands, forfeit them by committing treason, &c. This risk, however, was rendered comparatively small (1) by a trustworthy person of means being selected as feoffee; and (2) by the Court of Chancery compelling the feoffee to carry out the trust (i) by accounting for any rents and profits received by him; (ii) conveying the land as directed by the *cestui que trust*; (iii) by allowing the *cestui que trust* to have quiet possession of the property. If the feoffee refused to do these things, or committed any other breach of trust, the Court imprisoned him, and kept him in prison until he purged his contempt by doing what the Court ordered him, viz., perform the trust.

This being the state of things, it was found that by means of uses and equity's interference, "the cardinal maxims of the feudal policy, as well as many of the subordinate rules of property, were virtually defeated. The factious baron, by vesting his estate in a few confidential friends, committed treason with comparative safety; the peaceful proprietor, by adopting the same course, enjoyed and disposed of the beneficial interest, unvexed by the exactions of the lord, and regardless of the rules of the common law; the fraudulent debtor defeated his creditors;" and therefore various statutes were passed, principally in the reigns of Edward III., Richard II., Richard III., and Henry VII. (see 50 Edw. 3, c. 6; 15 Rich. 2, c. 5; 1 Rich. 3, c. 1; 19 Hen. 7, c. 15), with the view of reforming and governing uses; but these remedies were only partially successful, and the legislators in Henry VIII.'s reign, convinced that uses, being of so subtle, perverse and ungovernable a nature, could not by any policy or provision be reformed or governed, determined "in the same way as a gardener does not cut away the leaves of his weeds, but extirpates them by the roots," to extinguish and extirpate uses altogether; and with this object in view, they procured the statute now under consideration to be passed. This statute, after setting out in the preamble the various evils resulting from lands being conveyed to uses, and showing that by them "the ancient laws of this realm were utterly subverted," provided—

"That where any person shall be *seised* of and in any *honors, castles, manors, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any other person or persons, of any body politic*, by whatever means it be, such persons and bodies politic that have any such use, trust, or confidence in fee simple, fee tail, for life or years, *shall be adjudged in lawful seisin of and in the same honors, castles, &c., to all intents, constructions and purposes, in the law of and in such like estates as they had in use, trust, or confidence*, of or in the same, and that the estate of the person seised to the use of any other person, &c. shall be in the latter *after such quality, manner, form, and condition as they had before in or to the use, confidence, or trust.* That where several persons shall be jointly seised of lands, &c. to the use, trust, or confidence of any of them that be so jointly seised, the persons having such

use, &c. shall only have the same estate in the lands as they had before the statute in the use, saving the former rights of all and singular persons and bodies politics, their heirs and successors not so seised to the use of another person.

"And also saving to all persons seised to any use all such former right and title, entry, possession, rents and action as they before the Act had to their own proper use in and to the property of which they shall stand seised to such use, &c." (Sects. 1—3.)

"That where any person shall stand seised of any lands, &c. in fee simple or otherwise, to the use and intent that some other person shall have and perceive yearly to him an annual rent of 10*l.*, more or less, out of such lands for life or years, or some other special time, such last-named person shall be deemed in possession, and seisin of the same rent for such estate as he had in the use, and as if a sufficient grant had been made to him by the person seised to his use, and that the person having such use, &c. shall have power to distrain for any such rent, and in his own name make avowries, and have all other remedies for such rent as if the same had been actually granted to him with sufficient clauses of distress, &c." (Sects. 4 and 5.)

Sects. 6, 7, 8 and 9 of the statute relate to the dower of married women; and the effect of these sections is—(1) that where a woman has a jointure she shall not be entitled to her dower; (2) that if she is evicted of her jointure her dower shall revive; and (3) that if the jointure be made *after* marriage, she shall have her election when the coverture ceases to have either her dower or her jointure, but not both.

(*To be continued.*)

RECENT STATUTES DONE INTO VERSE FOR THE USE OF STUDENTS.

THE MARRIED WOMEN'S PROPERTY ACT, 1882.

Every married woman now
Can get, hold, and dispose of
Every kind of property
That anybody knows of.

Can give by either deed or will,
As tho' she were unmarried;
Hindered by no husband, nor
By any trustee harried.

She can contract and always bind
With every facility,
Herself and separate estate
In equal liability.

So she can sue, and sued be
In contract and in tort, sir;
You need not join her husband,
As heretofore you ought, sir.

And any damages or costs
She haply may recover,
Are all her own, and not her mate's,
However much he love her.

And any damages and costs
Against her found whatever,
Her separate estate shall pay,
And her dear husband never.

So every contract shall be deemed
Her separate property binding,
Unless the contrary be shewn
In judge or jury's finding.

Not only that which at the time
Of contract she possesses;
But also all that she may get
Or gain, as time progresses.

And if she carry on a trade
Apart from lord and master,
She always may be bankrupt made,
Just like a man—(but faster!)

Every woman who is wed
Since 'eighty-three commenced,
Her property "separate" shall be
From husband's contact fenced.

As well what's hers on wedding day
As on a subsequent occasion:
Including money, earnings, wages,
Acquired in any occupation;

In which apart from husband, she
May be engaged—howe'er prolific
Her genius be—commercial,
Literary or scientific.

But if she let her husband have,
For purposes of trading,
Her money or her property,
His business fondly aiding;

If he should ever bankrupt be,
Commercial credit wronging,
Such money goes to his estate,
To creditors belonging.

But wife a dividend can claim,
When *bonâ fide* claimants
Have one and all been satisfied
By full and perfect payments.

If wife with general power by will
Do exercise it duly;
The property appointed shall
Bear all her debts most truly.

(*To be continued.*)

NOTES ON THE FINAL.

Some detailed remarks on the June Final Pass will be found in another column. At the Pass, the Equity Paper appeared to us an excellent one. The Common Law a very badly framed one indeed. The Conveyancing Paper good. Bankruptcy Paper good also. Criminal Paper better than usual, but decidedly hard, and some of the questions were badly framed. The extra subject paper fair.

The Honors Papers were well framed, and showed a skill in setting questions to find out the candidate's real knowledge which was lamentably absent from the common law Pass questions.

Our answers, as usual, were published immediately after the Examinations, and have been duly despatched to our subscribers.

The result of the "Pass" will be announced in the Law Society Hall, on Friday next, July 3rd, and the list of successful candidates will also appear in the "Times" of Saturday, July 4th.

The Honors result will appear in the same way, a fortnight later, *i. e.*, on July 17th and 18th.

We understand that the number of candidates at both Pass and Honors Examinations was very large, and looking to the searching character of the questions set, we cannot help fearing that a goodly number of those who are anxiously awaiting the publication of the lists will be disappointed.

Those who are unfortunate enough to fail in satisfying the Examiners should, in our opinion, first take their holiday, and then settle down to, and continue, earnest hard work until the Examination in November.

We have heard some complaints made regarding the accommodation of those candidates whose seats were at 61, Chancery Lane. The desks appear to have been far from firm, and as several candidates were placed at one desk, considerable inconvenience was felt when one of the candidates found it necessary to blot his answers, or make some other move. Grounds for any such complaints really should not exist.

The syllabus for the Examinations of 1886 should appear this month or early in August.

(HONORS LIST, April, 1885.)

Erratum.

The prize awarded to Mr. Brotherton at this Examination was of the value of **£10 : 10s.**, and not, as stated by us, **£5 : 5s**, the usual sum awarded to the winner of the Clifford's Inn Prize.

When the new syllabus appears we hope to find that this alteration is a permanent one, as £10 : 10*s.* is little enough for the second Prizeman at such an Examination as the Honors has developed into.

NOTES ON THE INTERMEDIATE.

Excellent papers were set at the June Examination for Intermediate Students, as our readers will have perceived from Supplement (No. 8) to Law Notes (Vol. IV.), containing the questions and answers, which was published on the morning after the Examination.

We do not know how many candidates presented themselves, but they constituted, we believe, a goodly number.

The list of successful candidates will be announced in the same way, and at the same time, as the list of successful final candidates; and our advice to those who do not find their names in the list is the same as that suggested for Final Students. (See notes on the Final.)

Each Examination tells the same tale—the determination of the examiners not to let any one pass who has not thoroughly and conscientiously got up the portion of work allotted for the Examination.

The list of subjects for the Examinations of 1886 will appear before the end of this month or early in August. As far as we can learn there is no thought of altering the subject. The only change which we think necessary is the cutting out of the Introduction in Vol. I. and the conclusion in Vol. IV. of Stephen, and by this means confining the questions to Books I., II., III. and IV.

We continue below the useful mems. on Stephen.

"MEMS. ON STEPHEN."

(*Continued.*)

What is a Trust.

The term "trust" is used in two senses, namely (1) a confidence reposed by one man in another with respect to property committed to him as the nominal owner, but not involving a use which the Statute of Uses is competent to execute. (2) The beneficial or equitable interest of the *cestui que trust* as opposed to the legal and possessory interest of the trustee.

The various kinds of Trusts.

1. Active. 2. Passive. 3. Executed. 4. Executory. 5. Express or declared. 6. Implied or resulting.

How far Equity follows the Law.

It does so in most matters, the maxim being *Æquitas sequitur legem.* Thus the same equitable estates as legal estates may be had in lands. So an equitable estate, like a legal estate, may be in possession or in expectancy. The doctrine of merger, generally speaking, applies equally to equitable as to legal estates. The same rules of construction are followed as to equitable as to legal estates, *e. g.* Shelley's rule.

How an Estate in Corporeal Hereditaments may be acquired.

In two ways, viz.:—(1) By *descent, i. e.* by act of the law; and (2) By *purchase, i. e.* by act of the law.

What is included in a Title by act of Law.

It includes all those modes of acquisition where the law casts the right to the estate on the acquirer, independently of any act or interference of his own or of any other person for that purpose. Hence, it includes not only *descent* proper, but also the acquisition of lands by escheat, dower or curtesy.

What is included in a Title by act of the Parties.

This includes every lawful mode of coming to an estate by the act of the party as opposed to the act of the law, and hence comprises *occupancy, forfeiture* and *voluntary transfer.*

On what is the Doctrine of Descent founded.

For the most part not on statute, but on the custom of the realm, since the law of descent was not reconstructed by the Inheritance Act, 1833 (3 & 4 Will. 4, c. 106).

The alterations in the Law of Descent made by the Inheritance Act.

As stated above, this Act did not for the most part create new law, but merely reconstructed the common law. The following alterations were, however, effected by it:—

(1) Descent is now traced from the last purchaser instead of from the person last seised; the maxim now being *Perquisitio facit stipitem* instead of *Seisina facit stipitem.*

(2) The lineal ancestors are now allowed to inherit, and the maxim *Hæreditas nunquam ascendit* is no longer in force.

(3) Brothers and sisters to the purchaser now trace their descent through the ancestor, and not directly from each other, and so the doctrine *Possessio fratris* is no longer admitted.

(4) The half-blood brother or sister is now capable of being heir; formerly such relations were wholly excluded.

(5) Where lands are devised to the heir-at-law, he now takes as purchaser, and not as heir.

What the Term Purchaser, as used in the Inheritance Act, signifies.

It means, "He who last acquired the lands otherwise than by descent, or than by any escheat, partition or enclosure, by the effect of which the lands shall have become part of or descendible in the same manner as other land acquired by descent."

What is meant by the term "Quasi Purchaser."

Where there is a total failure of the heirs of the last purchaser (as above defined), then by Lord St. Leonards' Act (22 & 23 Vict. c. 35, s. 19), descent is to be traced from the person last entitled as if he had been a purchaser. This person is called the "quasi purchaser."

Illustration of a "Quasi Purchaser."

A., a bastard, buys lands and dies, leaving B., an only child, and C., his (A.'s) wife him surviving. B. takes the lands as heir, for a bastard can have an heir of his own body. B. subsequently dies, still seised of the lands, and while still a bachelor. The lands go to A.'s heir, he being the last purchaser; but as A. was a bastard, and his only son is dead without issue, and as a bastard can have no lineal ancestor, and no collateral relatives, there was, in such a case, formerly an escheat *propter defectum sanguinis;* but now descent would be passed from B., the person last entitled, as if the purchaser; and as B. has no lineal descendant, and, his father having been a bastard, there are no lineal ancestors on the paternal line, the lands will go to the maternal line, and C., B.'s mother will be heir. If C. is dead, leaving issue by a second husband, then this issue, the half-brother or half-sister of B., will inherit under the rule as to the admission of the half blood.

The position of the Half Blood as to Inheriting.

They are allowed to inherit next after the brother or sister of the whole blood and his or her issue when the common ancestor is a male, and next after the common ancestor when the common ancestor is a female.

An illustration of the Half Blood Rule when the Common Ancestor is a Male.

A. marries X. and has by her a son B. and a daughter C. X. dies and A. marries Z. and has by her a son D. Here A. is the common ancestor, that is, he is the father of both stocks of children. B. and C. are brother and sister of the whole blood, having had the same couple of ancestors; while D. is brother of the half blood to B. and to C., having had the same father, A., but a different mother. B. buys lands and dies intestate and a bachelor. Descent is traced from B., and as he has no lineal descendants the lands go to A., his ancestor. If A. is dead then the lands will go to A.'s issue. Now of A.'s issue C. is sister of the whole and D. is brother of the half blood, consequently C. will take the lands; if C. is dead leaving issue, her issue will take before D. If C. is dead without issue then D., the brother of the half blood, is entitled to succeed.

Illustration of the Half Blood Rule when the Common Ancestor is a Female.

A. by her husband X. has a son B. and a daughter C. X. dies, and A. marries Z. and has by him a son

D. Here A. is the common ancestor—that is to say, she is the mother of not only B. and C. but also of D. B. and C. are brother and sister of the whole blood, while D. is their brother of the half blood only. B. buys lands and dies intestate and a bachelor. The lands will descend to B.'s heir. There being no lineal descendants, the lands would go to X. if he were living; but as he is dead the lands will descend to his issue—that is, to C., the whole blood sister of B. If she is dead her issue will take. If she is dead without issue the lands will not descend to D., the half blood brother, for he cannot take, the common ancestor having been female, until after the common ancestor (A.), and she cannot take until after all the paternal line has been exhausted. Consequently, the heir will have to be sought in the paternal line of B.; and on the exhausting the paternal line, A., the common ancestor, would be entitled, and if she were dead her son and B.'s half brother (D.) would be heir.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements of his Correspondents.*]

Answers to Correspondents.

H. Lewis.—Thanks. We have rectified the error.

A. C. B.—Thanks. The list is alphabetical only.

H. Newell.—It is not necessary to refer to tithe rent-charge in the conditions unless the conditions state that the land is free from tithe. The purchaser is presumed to know that the lands are subject to tithe or tithe rent-charge. Consequently the purchaser cannot insist on the vendor redeeming the land from the charge. We are glad you like the Student's Conveyancing—the only reference to this point is on page 110.

Ship-Canal.—(1) Not many; but a dower tenant is not within the Act, nor is a tenant *pur autre vie* if he holds at a rent. (2) There are some exceptions (which you will find in any probate book), but generally probate or administration is necessary *where there is any personal property.*

Thomas Bell.—The first construction you put upon the sub-section is the right one. In a lease it is useless for the lessor to convey "as beneficial owner." Had the latter construction been the correct one, then no doubt the sub-section would have been better framed as you suggest.

C. F. Davies.—If articled for five years you cannot go up for your Intermediate until after serving half your term, nor for your Final till your full term has expired or nearly expired. We cannot undertake to answer letters by post.

E. R. Ward.—Many thanks; but as we missed the case we do not see our way to giving it now.

H. F. P.—Quite true in theory. The property in the pheasants passed to the plaintiff, but still the defendant was liable for the damage done; for the plaintiff did not want the pheasants, and the damage would never have been done but for the defendant's acts. It is a curious point, of course.

Intermediate.—(1) November, 1886. (2) The Law Notes articles.

T. L. Rowse.—We think that a sixpenny stamp would suffice, but cannot advise definitely. We do not recollect receiving your previous letter.

J. P. F. Smith.—You are mistaken. The statute you refer to only applies to sheep and cattle (including horses), and not to all domestic animals; and the answer we gave to our correspondent last month was in respect of an injury done to a cat.

F. B. Webb.—Certainly you can wait till June.

Alfred Condell.—June, 1886. If you use the 8th edition you must have by you the 4th or 5th edition of Gibson's Guide to Stephen.

Lex.—As the goods are not *trade* goods, the order and disposition clause does not apply, and the furniture will belong to the vendor. You forget that the order and disposition clause has application only to goods used by a man in his trade or business.

P. H. Brotherton.—We are very sorry that we fell into a mistake; but we have rectified the matter this month.

H. E. Coley.—Thanks (the Notes to the Final).

Ignoramus.—(1) and (2) Only one writ, under which sheriff would levy on both properties. (3) Two writs. (4) (5) and (6) Certainly.

D. R. Read.—Thanks.

W. V. Mulcaster.—Yes, he would take 1,000*l.* of the legacy. *Re Lord Wharton and Durham.* We think that this would be as you suppose. We always give a table of contents *at the end* of our magazine each month.

D.—A notice of new trial does not stay execution, unless the judge so orders. If the judge ordered a stay, B. would, of course, be guilty of contempt and punishable by attachment.

W. H.—(1) A second cousin is the grandchild of a great uncle or great aunt, and stands in the sixth degree of relationship to the propositus. A cousin once removed is the child of a first cousin, and stands in the fifth degree. (2) That in the nearest degree. (3) These are first cousins twice removed. They would take, if at all, as the next of kin, *i.e.*, if there were none of nearer degree. Representation among collaterals is not admitted farther than the children of brothers and sisters.

W. H. (Chester).—If you do what you propose it will be quite sufficient. The Acts of 1883 are not incorporated in the 9th ed. of Stephen, though they are duly incorporated in the 5th ed. of Gibson's Guide to Stephen.

Correspondence.

To the Editor of the "Law Notes."

SIR,—In the programme of the Congress of Law Students, given in your June issue, there is (*inter alia*) a motion "that articles should be shortened by one year." This surely is a step in the right direction. The five-years system is a disadvantage to all parties. Take the case of a country articled clerk: whatever he learns of the profession in four years he certainly could learn in three, and then still have his year in town; the practice seen in country towns is usually but too limited. Should you find space to publish this, I am convinced many articled clerks will send you similar views, and, so great is the circulation and influence of your "Notes," we might get a favourable result from "the powers that be."

"LIMB."

To the Editor of the "Law Notes."

SIR,—The following extract is cut from "The Weekly Dispatch" of Sunday the 21st of June. A solicitor advertising for clients is most unprofessional, but is it not also a matter for the attention of the Law Society? A "Mr. Moseley, solicitor, 24, Alpe Street, Ipswich," calls himself "A solicitor (certificated) of twenty-eight years' practical experience," but I cannot find his name in the Law Society's Calendar. A SUBSCRIBER.

LEGAL ADVICE.—A SOLICITOR (certificated) of twenty-eight years' practical experience is desirous of ADVISING by LETTER. Upon receipt of written Statement of Case, with postal order for 3s. 6d., a Full Légal Opinion and Letter of Advice how to act in the matter will be sent by return of post. No further fee

Mr. MOSELEY, Solicitor, 24, Alpe-street, Ipswich.

REVIEWS.

Bythewood and Jarman's System of Conveyancing. Vol. II., 4th edition. By L. G. G. ROBBINS, Esq. It is now some little time since we reviewed the first volume of the 4th edition of this work. The delay in the publication of the second volume has been caused by the great amount of entirely new matter which has been introduced into it. The subjects dealt with in the present volume are:

I. APPOINTMENT OF NEW TRUSTEES. To this are devoted 65 pages, 34 of which are given to some dissertations and the rest to 16 precedents. The dissertations are very full and very excellent, though we confess to a little disappointment in not finding on page 15 a definite opinion as to whether the power of appointing new trustees conferred by sect. 31 of the Conveyancing Act, 1881, applies so as to enable the personal representative of a sole trustee to exercise the statutory power. We find in this chapter (see pp. 23, 24) that the editor is of opinion that a married woman who is a trustee of real property cannot, under the Married Women's Property Act, 1882, convey except by deed acknowledged, unless, indeed, she is but a bare trustee within the meaning of sect. 6 of the Vendor and Purchaser Act, 1874, an opinion we have often ourselves expressed. The editor, also, has no doubt (see p. 34) that a deed used for the double purpose of appointing a new trustee and, by means of a declaration, vesting the property in the new trustee, requires a double stamp duty. The precedents given are 16 in number, and appear to cover all the necessary ground.

II. The next subject dealt with, and covering some 30 pages in all, is APPRENTICESHIP. In the dissertations attention is drawn to the necessity for providing for the return of a part of the premium paid under articles of apprenticeship in the case of the contract being determined by death of either party at an early stage of the apprenticeship. The necessity for such a clause was very strongly evidenced in the case of *Ferns* v. *Carr*, too recently decided to appear in the work before us.

III. The next 160 pages (pp. 95 to 255) are devoted to that important and difficult subject ARBITRATION. The dissertations seem to us very complete and perfect, and are brought down to date, the provisions of the Judicature Act, 1884, having been duly introduced. When dealing with the rule laid down in the leading case of *Scott* v. *Avery* on the subject of arbitration, we failed to find any reference to the case of *Babbage* v. *Curtburn*, in which the rule was very fully threshed out and explained by the Court of Appeal. (See p. 103, n.) On p. 188, in connection with the subject of setting aside awards, the editor calls attention in a footnote to the fact that the time for applying laid down in 9 & 10 Will. 3, c. 15, viz., before the last day of the *term* next following the publication of the award, has been altered by Ord. LXIV. r. 4, to the last day of the next *sittings*; but no comment is ventured on the question as to the power of the judges to alter by rule of court a statutory enactment, especially in face of 36 & 37 Vict. c. 66, s. 26. The precedents seem to give every form which could be required in connection with an arbitration.

IV. Fifteen pages are devoted to forms and notes on the subject of ATTESTATION, and this chapter will be found very useful in practice; on p. 252 a useful list of deeds, &c. requiring attestation by statutory enactment is given. We miss from this list *absolute* bills of sale, which must still be attested by a solicitor, under the provisions of sect. 10 of the Bills of Sale Act, 1878, notwithstanding that this section is repealed by the Amending Act of 1882, since the repeal only applies to bills given to secure money. (See *Swift* v. *Pannell*.)

V. Over 100 pages are given to the subject of BONDS. Looking to the fact, to which the editor draws attention, that bonds are not now so frequently used, it would seem that an unnecessary

large space has been devoted to them. However, the dissertations cover much useful ground, though we must express much surprise at finding no reference on pp. 298, 302, to the decision of the House of Lords in *Wallis* v. *Smith*, on the intricate subject of penalties and liquidated damages, and at finding on p. 335, the statement that the vendor of the goodwill of a business is not allowed to solicit old customers of the business he has sold, in entire forgetfulness of the decision of the Court of Appeal last year in *Pearson* v. *Pearson*, a case which we, in common with most other editors of legal papers, considered of sufficient importance to give to its consideration a separate article, and which throws great doubt upon, if it does not absolutely do away with, the rule above stated.

VI. We now come to a portion of the volume which will be very welcome to the profession at the present time, viz., COMPOSITIONS. To this subject over 200 pages are devoted, and we are convinced that the dissertations and precedents thereon will be invaluable as long as the present bankruptcy laws remain unaltered.

VII. Next come CONDITIONS OF SALE, and in the 150 pages over which the dissertations extend, no matter of importance appears to have escaped the observation of the editor, except, perhaps, that the rights as to title of a purchaser of enfranchised copyholds under an open contract are not quite so fully discussed on p. 671 as they might have been. The dissertations are followed by some very useful precedents.

VIII. As an eighth head appears DISCLAIMERS, including Disclaimers by Trustees in Bankruptcy.

IX. The next 50 pages are given to a consideration of ENFRANCHISEMENT OF COPYHOLDS at common law and under the Copyholds Acts of the present reign. Dissertations and forms with regard to Enfranchisements under the Settled Land Act, 1882, also appear.

X. Sect. 65 of the Conveyancing Act, 1881, as amended by sect. 11 of the Conveyancing Act, 1882, renders necessary some dissertations and forms under the head ENLARGEMENT OF TERMS. This subject does not appear to us to have been as exhaustively dealt with in the dissertations as it might have been, and we were particularly surprised to find no reference to perhaps the only important reported case on sect. 65, viz., *Smith* v. *Stott*, 48 L. T. 512.

XI. and XII. Lastly come dissertations on and forms of EXCHANGES and INDEMNITY, and the volume closes with a good Index.

The exhaustive and accurate character of the first two volumes of this valuable work make us long for the completion of it; and from the Preface in the volume before us it may reasonably be anticipated that it will not be long before the remaining four volumes appear. The work is published by H. SWEET & SONS, 3, Chancery Lane, and reflects great credit on editor, publisher, and printer.

Hunter's Roman Law, 2nd edition.—This volume, by the same author, is of course a book which will interest a more limited section of readers. The time and labour required to peruse it cannot be well spared by others than those who find it necessary for special reasons to attain a comprehensive knowledge of Roman Law. But for such persons no better treatise could be adopted as a text book. The work is founded on Justinian, the text of Huschke being mainly followed. Oversights and misprints in the 1st edition have been corrected, and parts have been re-written and enlarged, and the value of the author's own work has been enhanced by an exhaustive account of the External History of the Roman Law, by Professor Newison. The division of the subject is on the lines adopted in the "Introduction," and some account of the Criminal Law is given in an Appendix. It is published by Messrs. MAXWELL & SON.

The Law Quarterly Review (April, 1885, Vol. I. No. 2).—This is, on the whole, an interesting number. The first article is a very fair criticism of our English system of law reporting by Lord Justice Lindley. *Inter alia*, he gives some advice which the proprietors of the "Law Reports" would do well to consider. The second paper reviews the existing Lunacy Laws, and concludes that the law is sound in principle, and, though admitting of improvement, affords a better security against abuse than most people imagine. The papers on "Early English Equity," "Land Tenure in Scotland and England," "The Text of Bracton," and "Jurisprudence in Legal Education," are interesting, but will not perhaps attract much attention from the practically disposed. The most useful paper in the number is, in our opinion, that by the learned Editor, which gives a clear, concise and comprehensive view of the "Law relating to the Liability for the Torts of Agents and Servants." We could have wished, however, that he had discussed the Employers' Liability Act at greater length. The humour of the "Circuiteers," an eclogue, has by age lost too much of its poignancy to be much appreciated at the present day. The Notes and Digest of Cases will be found very useful. It is published by STEVENS & SONS, Chancery Lane.

We have also received:

Powell's Law of Evidence, 5th edition.—By JOHN CUTLER, B.A., and E. F. GRIFFIN, B.A. Published by Messrs. BUTTERWORTH.

Handbook of Public International Law.—By T. J. LAWRENCE, Esq., M.A., LL.M. Published by Messrs. DEIGHTON, BELL & Co., Cambridge.

Analysis of Snell's Principles of Equity.—By E. E. BLYTH, Esq., LL.B., B.A. Published by Messrs. STEVENS & HAYNES.

LAW STUDENTS' DEBATING SOCIETIES.

THE LAW STUDENTS' CONGRESS, 1885.

By a Delegate.

Now that the members of almost every profession and trade periodically assemble in conference, and discuss how their special interests may best be promoted, it is not surprising, at first sight, that the rising generation of the talking profession—albeit, but on its threshold—should hold their Congresses and ventilate, and give united expression to, the many needless grievances and obstacles which beset the path of the embryo lawyer. But when one considers how barren of practical fruition were the two predecessors of the great Congress of Law Students held last month in Clement's Inn Hall, it is a matter of wonder, although, indeed, a hopeful sign for the future of the profession, that delegates should have had the enterprise to travel up to London—in many cases from the North of England—in order to confer with each other as to projected improvements in their education and general status. And if those who took part in the late Congress can hereafter point to one reform, however insignificant, of the many which they advocated, as the direct or indirect result of their labours, their energy will have been rewarded: for the Congress of 1885 will have succeeded *pro tanto* over the earlier conferences.

It is now full thirteen years ago since the first Congress of English Law Students took place. The meetings were convened by the Birmingham Law Students' Society, and were held in the midland metropolis, in May, 1872. The Congress was spoken of, by its originators, as a "great success." The data on which this high laudation was grounded were not recorded. Five-and-twenty delegates, representing eleven Law Students' Societies, agreed with tolerable unanimity on, amongst others, four reforms in the management and character of the Incorporated Law Society's Examinations. Two of these are alterations which have been urged again and again in the "Law Notes," and which would meet with general approval, viz., the stiffening of the Preliminary and the classification of Intermediate Candidates. Another resolution advocated the establishment of a Law University.

In November, 1879, another Congress was held, this time in London, under the auspices of the United Law Students' Society. Between fifty and sixty delegates, representing seventeen societies, attended the two days' deliberations. Resolutions to the same effect as those which found favour at Birmingham were passed, and were sent to the Incorporated Law Society. That august body simply blinked the question of the merits or demerits of the decisions arrived at by stating, through their secretary, that they did not recognize the status of the Congress, and therefore could take no notice of the opinions expressed by it. This damper on the well-meant efforts of the promoters and delegates of the Congress effectually discouraged any idea of holding another for some years.

At the commencement of the present year, however, the United Law Students' Society passed a resolution in favour of holding a Congress during 1885, and communications on the subject were opened with the provincial societies in union with the latter society. At first there was no very general response to the invitation of the London society; not more than two or three societies giving definite assurances of support and co-operation. However, before the Congress secretary sent his list of delegates to the printer, twenty-nine societies in all had resolved to take part in the Congress, by sending their proportion of representatives to its meetings. Each society having not less than two hundred members was invited to send six delegates. Four societies were thus represented, viz. the United, Debating, Liverpool and Birmingham Law Students' Societies. To those numbering not less than one hundred were allotted four delegates each. The Bristol, Newcastle-on-Tyne, and Preston societies fell under this category. For the rest, three and two-membered constituencies respectively were the most numerous. The complement of the Congress was eighty-four.

The first meeting took place on the morning of June 18th. After an address from the Chair by Mr. Bateman Napier (United), in which he animadverted on the general indifference shown by principals in the progress and studies of their articled clerks, Mr. Charles Ford (United) read a paper on the "Future of the Profession." Mr. Ford dwelt in particular on the way in which the Law Society neglected the provisions of the 8th section of the Solicitors Act, 1877, whereby the surplusage of the fees paid by articled clerks is directed to be laid out for their advancement. A resolution in favour of the amalgamation of both branches of the profession was discussed at some length, and rejected by twenty-five votes to fifteen. A paper was then read by Mr. C. B. Wilson, jun. (Liverpool), on "Law Students' Societies, their Constitution, Objects and Uses." A motion in favour of making a percentage of attendances at debating societies compulsory was rejected by a large majority.

At the evening meeting the Chair was taken by Mr. Whitfield (Liverpool). Mr. Smith (Birmingham) read a paper on "Lectures and Classes as a means of Legal Education," in which, for reasons which did not seem altogether cogent, he advocated the subjects of law lectures being made more practical than theoretical. The necessity of a Law University was decided on by twenty-six against eight.

With practical unanimity it was declared desirable that the Incorporated Law Society should establish in Liverpool, Manchester, and other large towns,

"suitable" lectures and classes. Many delegates supported this resolution only on the ground of the lectures being understood to be a mere temporary boon until a Law University could be founded, and not as a final satisfaction of law students' demands.

The third meeting took place in the afternoon of June 19th, Mr. Coley (Birmingham) in the Chair. Mr. Trotman (Bristol) read a paper on "The present System of Examinations of Articled Clerks," in which he managed to import a freshness and vigour, which was much appreciated, into the threadbare topics of Preliminary and Intermediate shortcomings. After some discussion, a lengthy resolution, to the effect that the Preliminary Examination should be levelled up to the London Matriculation standard, from which there should be no exemption, was carried by twenty-nine against three. Two motions, one of which seems to be a *sine quâ non* of every Law Students' Congress, advocating the classification of Intermediate and the arrangement in order of merit of second and third class Final Honors men; and the other, to the effect that Final questions should deal more with legal principles and less with mere technical points of practice, were carried with but faint opposition. A resolution in favour of bestowing a prize on the best speaker at a Debating Society was rejected by a large majority.

In the evening a dinner, at which Mr. Edward Clarke, Q.C., M.P., presided, and the success of which no one will gainsay, was held to celebrate the Congress. Over a hundred London and country law students attended.

On Saturday morning, June 20th, the Congress met for the last time. Before proceeding to the business on the paper the report of the Committee appointed by the Congress at its first meeting to confer as to the practicability of starting a monthly Law Students' Magazine was considered. Beyond some fine generalities, the gist of which appeared to be that the proposed Magazine was to be perfectly unique in its way, and to have all the virtues, with none of the faults, of half-a-dozen other current legal periodicals, there was little or no practical information. Evidently the Congress did not appreciate the high-flown platitudes and the turgid periods of which the report was mainly composed; and after some severe criticism the whole scheme, such as it was, was rejected. Before the division was taken there occurred the only approach to anything in the nature of a parliamentary "scene" which disturbed or enlivened the generally placid tenour of the debates. Mr. Kains-Jackson, as the editor, annoyed at what he considered some ungenerous attacks made by the country members on the monthly circular or magazine which for some time has been sent to them by the United Law Students' Society, characterized the remarks of certain delegates from the Black Country as partaking of the nature of the district from which they hailed. On this there were several cries of "chair" and "withdraw," and a delegate appealed to the chairman, Mr. S. Smith (Debating), for his ruling, and not until the latter had ruled Mr. Kains-Jackson in order, at the same time giving his opinion that expressions of that kind did not conduce to amicable discussion, was the speaker allowed to proceed. Mr. Kains-Jackson (United) then read an interesting paper on the "Position and Prospects of Articled Clerks," in which he urged some fanciful changes in the status of the latter, more or less grounded on historical considerations. It was next unanimously decided "that the system whereby paid clerks can obtain articles without passing a preliminary examination, is detrimental to the status and credit of the profession." A resolution to send a copy of the resolutions passed to the Incorporated Law Society was passed unanimously, another thanking the United Law Students' Society for the trouble incurred by them in the management of the Congress, was carried unanimously and with applause.

In regard to the debating power of the Congress, at the risk of appearing invidious in mentioning names, I believe I am expressing the general opinion of my fellow delegates when I place the name of Mr. A. H. Coley (Birmingham) high in the list of speakers. Mr. Coley did not address the Congress more than once or twice, but enough to make his mark on their deliberations and cause his listeners to wish he had spoken more frequently.

Whether the Congress has or has not been a success it is premature now to discuss. It has yet to be seen if the various resolutions, which are to be forwarded to the Law Society, will make the faintest impression on the unruffled expanse of calm indifference on which they will be launched. Should such be the case, the Law Students' Congress of 1885 will have exceeded the expectations of many, for it will have succeeded where its predecessors have uniformly failed.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. August, 1885. Part 8.

SOME NOTES.

IN another column will be found the commencement of a series of cases relating to articled clerks. We propose to unearth and discuss all the important reported cases on the subject, believing that by so doing we shall be affording matter of interest not only to articled clerks, but also to their principals.

The article on "settled chattels," given in another column, will be acceptable to those of our readers who have not yet grasped the meaning of the technical terms which are used when chattels are settled to devolve, as far as the law will permit, with real property.

Our epitome of statutes, which will appear as usual in our October Number, is not likely to cover many pages. Was there ever a session so barren of statutes affecting the general public as that of 1885 is likely to prove?

The general meeting of the Law Society took place on July 10th, and was adjourned until the 24th of that month. We hope to comment on what took place at the meeting in our next Number.

It is provided, as our readers are no doubt aware, by sub-section 6 of sect. 3 of the Conveyancing Act, 1881, that on a sale of any property the expenses of the production of all acts of parliament, &c. not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and "the expenses of searching for, proving, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office or other copies or abstracts of or extracts from any acts of parliament or other documents aforesaid not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by the purchaser either for verifying of the abstract *or for any other purpose*, shall be borne by the purchaser who requires the same."

Truly wide terms; but from the decision of the Court of Appeal in *Re Johnson and Tustin*, they are not of so wide an application as they seem. In this case it appears that Johnson purchased at an auction certain lands in 1873. Under the conditions the title commenced with a deed dated in December, 1860, and the purchaser was precluded from calling for any earlier title. Last year (1884) Tustin, by open contract, agreed to buy this land from Johnson. The abstract of title sent by Johnson to Tustin began with the deed of December, 1860; but this being only a twenty-four years' title, and there being no restriction of Tustin's rights to demand a forty years' title, he required early title to be shown him, and he offered to accept an abstract of a certain indenture dated in October, 1854. This deed was not nor had it ever been in Johnson's possession; but he procured an abstract of it, and the question arose who should pay the expense which had been incurred in procuring an abstract of this deed. Pearson, J., decided that looking to the wide words of sect. 3, sub-sect. 6, referred to above, the purchaser must, on a strict construction of the section, bear the expense, since the deed abstracted was not in the vendor's possession and the purchaser had required the abstract of it. The Court of Appeal, however, reversed this decision, and held that the expense must fall on the vendor, for the section in question merely relieved the vendor from the expense of supplying abstracts of documents which are not absolute links of title, but about which a purchaser is entitled to ask for information—it did not relieve the vendor from showing his title. In other words, for the purpose of making out his abstract of title the vendor must, under an open contract, still bear all expenses of obtaining production, &c. of documents not in his possession; but the expense of verifying the title by the production of such documents must be borne by the purchaser.

There is nothing very hard upon vendors in this decision, for they can always protect themselves, as the Court of Appeal pointed out, by making special stipulations; whereas a purchaser is ignorant of the title until the vendor has supplied the abstract, and so cannot well make stipulations to protect himself.

Our new Lord Chancellor was, before his elevation to the woolsack, one of the leaders at the common law bar. Had his appointment taken place prior to the "fusion" of law and equity it might have been open to question how far it was right and good to have appointed a man, who, it must be taken for granted, has turned his attention to the rules of common law rather than to those of equity, to a judicial post the chief function of which is to administer equity. But since the Judicature Acts, as there is no distinction between solicitors and attorneys, so at the bar counsel should be taken to be equally well versed in the rules of common law and the doctrines of equity. We have no doubt Lord

Halsbury will be able to give full satisfaction in the performance of his judicial duties, without having to get up Snell's Equity beforehand.

Mrs. Weldon is not the only lady who shows herself to possess capacities for grasping the intricate subtleties of the law in no way inferior to those of the stronger sex. Mrs. Lotinga has just won a notable triumph, and, single-handed, has successfully conducted her own case, though it was one of unusual difficulty and dimensions, and though she was opposed by two Queen's Counsel and a junior. Talk about competition! we will soon have to compete not only with members of our own but with members of the opposite sex in every profession and business.

The late Lord Chancellor (Lord Selborne), as one of his last acts, made a new order as to fees and percentages to be charged and allowed in bankruptcy. It is satisfactory to observe that the fees, &c. are, in some cases, cut down, but they still appear to us to be in many cases absurdly high. Those of our readers who practise in bankruptcy will find it advisable to procure a copy of the new order which is dated June 15th, 1885, and which came into operation on 1st July, 1885.

A solicitor recently advertised for an articled clerk, and added that arrangements would be made for return of part of the premium should the clerk die during the term. Grim humour that! Unpleasantly suggestive of hard work, and a premature passing of the "Final."

Barlow v. *Teal*, noted in our cases columns for this month, will be an instructive case to many of our readers. The Court of Appeal has decided that a year's notice under sect. 33 of the Agricultural Holdings Act, 1883, to determine a yearly agricultural or pastoral holding is not necessary when there is any express agreement between the parties as to the notice which shall be necessary and sufficient. It is only when by law, *i.e.* "by implication of law"—in other words, in absence of any convention between the parties on the point—such a tenancy requires half-a-year's notice that the section requires a year's notice instead of half-a-year's. This seems the only reasonable construction to be placed on a section which was evidently only intended to apply in the absence of stipulation.

We agree with the "Albany Law Journal" in thinking that the plaintiff under the following circumstances was unreasonably premature in his demand:—"For the mortification and disappointment resulting from a failure to provide a berth for plaintiff and his wife when starting on their wedding trip, escorted to the depot by their friends, a jury of the Superior Court of Cincinnati recently brought in a verdict of $100 against the Baltimore and Ohio Sleeping Car Company."

At last it would seem that we have got a reasonable construction placed upon sect. 5 of the Married Women's Property Act, 1882. As our readers are aware, that section in effect makes all property, the title to which accrues on or after 1st January, 1883, to a woman married before that date, her separate property. The momentous question, whether the section applied to property, the title in reversion to which accrued before 1st January, 1883, and the title in possession thereto after that date, arose in *Baynton* v. *Collins;* and Mr. Justice Chitty held that it did. In *Re Thompson* a similar decision was given by Mr. Justice Kay, not because he himself thought that such was the right construction, but because he felt he ought to follow *Baynton* v. *Collins*. In *Re Hughes's Trusts* Pearson, J., believing that the question was going to be carried to the Court of Appeal, did as Mr. Justice Kay had done, and followed *Baynton* v. *Collins*. In *Dixon* v. *Smith*, Bacon, V.-C., arrived at a similar conclusion. None of these cases have yet reached the Court of Appeal; and the same point having again arisen in *Re Tucker*, before Pearson, J., he thought proper to arrive at a different decision to that given in *Baynton* v. *Collins*. Indeed, he might be said almost to have sat on appeal on that case. He holds that sect. 5 of the Act does not apply if the woman acquired any kind of title to the property before the Act.

Not only has Pearson, J., refused to follow *Baynton* v. *Collins*, but Kay, J., has also refused to do so, having in *Re Adames's Trust* come to the same conclusion as that arrived at by Pearson, J., in *Re Tucker*. These later decisions may—and, we believe, do—indicate the true construction of the disputed section; but they are hardly polite to the learned judge who decided *Baynton* v. *Collins*.

The whole question turns on the meaning of the word "accrue." Though the word may be said to mean "to receive an accretion of interest," and in this sense to be applicable to the case of a title in reversion becoming a title in possession, yet this meaning can hardly be applicable to the case of a married woman becoming originally entitled in reversion after the coming into operation of the Act: she becomes entitled to an interest, not to an *accretion* of interest. Words are edged tools—double-edged, often—and parliamentary draughtsmen are not too skilful in the use of them.

Ungallant porter! Gentlemen *do* sometimes squeeze ladies' fingers—but her *thumb*, so unsentimental, you know; and with a door, too—as if it were a nut! *Atkins* v. *S. E. R.* was the result of this unsympathetic squeeze; and the lady in a reciprocal spirit "nailed" the company for 50*l*. But the company was not to be squeezed so readily, and moved for a new trial,

not of the thumb, but of the action, on the ground that there was no negligence on the porter's part, as the lady had admitted she was completely in the carriage. Surely that admission was against the evidence of her senses. Perhaps, though, she could not deny that her thumb *was* completely in.

Sum: If a lady's thumb costs you 50*l.*, what will her hand cost you? Give it up? Heart, probably.

"In all his long experience a more extraordinary case he had never seen, nor one involving so many of the worst traits in human nature. For what was the case? It was a son endeavouring to prove his old widowed mother guilty of a crime deserving penal servitude. A son accusing his mother, an uncle against his nephew, and a brother endeavouring to convict his sister. Surely among these wholesale accusations the poor invalided brother might have been spared." Speech for the defence, of course: who is the counsel? Defence? Counsel? Oh no—presumably not—for this is the summing up of Mr. Baron Huddleston in *James* v. *James and others*. Mark how well the calm judicial attitude is maintained. But the jury disagreed.

What has been the general theme of conversation? The "Maiden Tribute" articles of the "Pall Mall Gazette."

The facts disclosed by the "Pall Mall" were never novel, so why should they excite our special wonder? Current morality regards them as vices "*inter Christianos non nominanda*," but, like still waters, they run deep—and muddy, and the Pall Mall Gazette has but stirred the mud. Much good may it do!

Vice in cities is, like Mill's definition of matter, "a permanent possibility of sensation." The newspaper people have discovered it to be so—and to dis-cover it pays.

These "revelations" of the "Pall Mall" reveal little that is new; but the disclosure of the hideous traffic in children, the daily immolation of immature girls at the Moloch shrine of an unholy passion—this phase of lust is a novel feature in the world-old tale, and excites our "special wonder," disgust and indignation.

And what will be the effect of these disclosures? They will probably cause the Criminal Law Amendment Bill to be passed more quickly. The age of "consent" will be raised, and optimists will flatter themselves that the nation has been made virtuous by Act of Parliament. But the remedy lies nearer home.

By-the-way, it has been frequently asserted in the papers lately that it is no rape where the consent to sexual intercourse is obtained by fraud. This *was* the law until recently, but it would be very unsafe to say it is so now. For in *Reg.* v. *Flattery* (46 L. J. (M. C.) 130), where the prisoner procured connection with a girl by falsely pretending that the act was necessary for a medical purpose, he was convicted of rape. And this view was taken by the American Court in a case in which the circumstances were similar. Again, in a still more recent case in the Irish Courts, *Reg.* v. *Dee*, where a woman allowed a man to have connection with her under the mistaken notion that he was her husband, the judges reviewed the whole of the former cases at great length, and agreed almost unanimously that the prisoner was guilty of rape.

A. brings an action against B. for fraud. The Court says A. has no case, and gives judgment against him. Yet says the judge, "You, B., were distinctly careless, and therefore I will give you no costs." Is this right and fair? The Court has a discretion as to costs, but it has been laid down that a successful party should not be deprived of them except under exceptional circumstances. Do these exist here? What right has the judge to say B. has been careless? He has no evidence before him of carelessness on his part except such is alleged by A., and by stopping the action he takes away from B. the possibility of disproving A.'s allegations. It is very unfair on B. to take it for granted that he has been negligent without hearing what he has to say for himself. Yet a judge recently deprived a defendant of costs in a case similar in facts to the above. In our opinion he acted very unfairly, and the defendant has good ground for complaint.

The French government have recently revived an ancient law by voting a sum of money for the maintenance of the seventh child in a family. France's population is almost stationary, and politicians hope thus to cause it to increase. But no, Johnny Crepaud, it will not do: your peasantry are too wise.

There is no need for such a law or vote in this country—a poll tax would be more to the point. That form of intemperance is but too prevalent here. "Increase and multiply" is a Christian precept which has been most religiously obeyed—by the clergy especially. And yet Malthus was a reverend!

Notwithstanding the sale of Clement's Inn, it is agreeable to find from the Law Society's Report for this year that due provision has been made for the continuance in perpetuity of the Clement's Inn Prize at the Final Examination.

Husband and wife are not always "one" (nor at one); they are sometimes two too—many. Thus, if you defame a husband and send the libel to the wife, you publish it—of course you do, it's the surest way;

it hardly needed a leading case to show that. And now, decides *Jones* v. *Williams*, if you read a defamatory statement to the wife, albeit there's no malice, the "occasion is not privileged." This is what the defendant did. It was the only way, she said, of "getting at" the husband. But, alas! it enabled him to "get at" her, and from her, 15*l.*

The council of the Incorporated Law Society, we see, are taking steps to have the effect of the important case of *Fry* v. *Tapson* (commented on in our September Number last year) reversed by the introduction of a clause for the purpose into Mr. Ince's Bill. We think *Fry* v. *Tapson* might be let alone. The reader will remember that that case laid down the rule that trustees, in investing in mortgage of land, ought not to leave the choice of the surveyor, who values the land for the purpose of the advance, to the choice of their solicitors. In our opinion this is a matter which does not at all come within the scope of a solicitor's business. It may, indeed, be quite reasonable for him to submit to his clients the name of a surveyor, and even to recommend his employment; but the responsibility of making the actual choice should rest with the client. Trustees naturally like to put themselves about as little as is consistent with a due execution of their trust; but we think it is not advisable to encourage them to wash their hands of the whole matter, and to let their solicitors manage the whole trust business at their uncontrolled discretion.

The council of the Law Society are in favour of the father alone being appointed the guardian of his infant child. Quite right! Dual control is as objectionable in the family as in politics. Until the relationship of husband and wife arrives at that blissful stage of "two souls that beat as one," to give them joint and equal authority is absurd. Of the two, one must be the master: let this be settled in the natural way, by actual fact: or give the right to appoint a guardian either to the one or the other, not to both jointly. Husband and wife have quite enough *casus belli* without having an additional ground on which to found a squabble given to them by law.

Clients continually complain of their lawyers, and lawyers of their clients. The following dialogue, which we extract from the "Albany Law Journal," shows that it is, after all, only a case of the pot calling the kettle black.

Client.

Who taught me first to litigate,
My neighbour and my brother hate,
And my own rights to overrate?
My lawyer.
Who cleaned my bank account all out,
And brought my solvency in doubt,
Then turned me to the right-about?
My lawyer.

Lawyer.

Who lied to me about his case,
And said we'd have an easy race,
And did it all with solemn face?
My client.
Who took my services for naught,
And did not pay me when he ought,
And boasted what a trick he'd wrought?
My client.

To the Final, during the year ending in April last, there went up 1102 candidates; of these 843 passed and 259 were "spun." The proportion of the victims to the victors is large: it is three men out of every eleven. Let future candidates take the lesson to heart: the Examinations are not to be "sneezed at." One must work even for a pass.

1193 men went up for the Intermediate: 936 passed, 257 did not. Matters seem no better here than with Final candidates, and the Law Society Examinations one and all point to this, that all who would succeed must work.

The details of the *Lotinga Case* might point a moral, though they would not adorn a tale. The moral is, do not frequent inns if you do not drink (*à fortiori*, do not if you do), for many will not doubt but that you do, and if they do will not give you the doubtful benefit of their doubt. There, is not that "lucid"? As clear as—an Act of Parliament!

A correspondent, who writes under the *nom de plume* of H. L., draws attention to a serious grievance. We can but think that the grievance is of local character, and does not prevail universally, or there would long before this have been an outcry.

CASES OF THE MONTH.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXIX., where further details of the case may be found.]

I.—CASES CONFIRMED, REVERSED OR ALTERED ON APPEAL.

[The references under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., Tudor, and Student's Conveyancing, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, Tudor's Conveyancing Cases, and Gibson & McLean's Student's Conveyancing, and indicate the page at which a note of the decision should be entered.]

Barlow v. Teal.

(S. J. 589; L. J. 122.)

The decision in this case (noticed *ante*, p. 151) was affirmed on appeal, but the Court of Appeal

based its decision on a different ground. Sect. 33 of the Agricultural Holdings Act, 1883, which makes a year's notice necessary to determine a yearly holding under the Act, only applies where half-a-year's notice is, apart from the Act, "by law" necessary to determine the tenancy; and this "by law" signifies by "implication of law;" and, consequently, where, by express agreement, such a tenancy is determinable by a six months' notice, or even by half-a-year's notice, the section has no application, and the notice agreed upon by the parties takes the place of the year's notice required by the Act when there is no express agreement by the parties.

(Student's Conveyancing, p. 313; and as a note to sect. 33 of the Agricultural Holdings Act.)

Johnson and Tustin, In re.

(T. 579; W. N. 140; S. J. 589; L. J. 122; L. T. 174.)

The decision in this case (see 3 Law Notes, p. 359) was reversed on appeal. The Court of Appeal said that the effect of sect. 3, sub-sect. 6, of the Conveyancing Act, 1881, was not to relieve a vendor from the expense of showing his title, but only from the expense of proving it in respect of matters the proofs of which are not in his possession, and from the expense of supplying abstracts of documents which are not links of title, but about which the purchaser is nevertheless entitled to require information. The balance of convenience was in favour of this construction, because a vendor is presumably aware of the nature of his title, and can protect himself by special stipulations, whereas the purchaser is ignorant of the title until the vendor has supplied him with the abstract. So that the vendor must, under an open contract, still pay the expenses of procuring an abstract of a deed not in his possession.

(Student's Conveyancing, p. 28; and as a note to sect. 3 in books on Conveyancing Acts.)

Last v. London Assurance Corporation.

(T. 617; L. T. 210.)

The decision of the Court of Appeal (noted 4 Law Notes, p. 11) was reversed by the House of Lords, Lord Bramwell dissenting.

Merchant Taylors' Co., Re.

(W. N. 134; S. J. 575; L. J. 118; L. T. 155.)

The decision of Chitty, J. (see 4 Law Notes, p. 153), has been affirmed by the Court of Appeal.

Moody and Yate's Contract, In re.

(W. N. 150; S. J. 621; L. T. 210.)

The Court of Appeal has affirmed the two points decided by Chitty, J., in this case. (See 4 Law Notes, p. 69.)

West London Commercial Bank v. The Reliance Permanent Building Society.

(T. 609; W. N. 156; S. J. 621; L. J. 129; L. T. 210.)

The decision of Bacon, V.-C., to the effect that a first mortgagee who has received notice of a second mortgage is responsible to the second mortgagee for any balance there may be arising from a sale of the property mortgaged, even though the sale was effected by the mortgagor, and the first mortgagee merely joined in to convey the legal estate, and to give a receipt for his debt (3 Law Notes, pp. 227, 228), was affirmed by the Court of Appeal.

II.—GENERAL CASES.

[For explanation of references, see previous heading.]

Can arrears of tithe rent-charge be recovered by sale of the lands charged?

Bailey v. Badham.

(W. N. 135; L. J. 118.)

Notwithstanding that by 6 & 7 Will. 4, c. 71, the sum payable in lieu of tithes is declared to be "in the nature of a rent-charge issuing out of the lands charged therewith," Bacon, V.-C., held that the tithes were not thereby rendered a charge on the inheritance, and that arrears are not recoverable by sale of the hereditaments in respect of which the rent-charge is payable.

(3 Fisher, p. 806; E. Smith's Ecc., p. 85.)

Has a servant employed by his master to sell a horse an implied authority to warrant the horse?

Baldry v. Bates.

(T. 558; S. J. 513.)

If the master is a horsedealer the servant has such an authority but not otherwise. (See *Brady* v. *Todd*, 9 W. R. 483.) In the above case the defendant was a riding-school master, and a necessary incident to his business was the sale and purchase of horses. His servant had sold a horse to the plaintiff with a warranty. The horse not being according to warranty, the action was brought for damages for breach of warranty.

The Divisional Court held that as there was no evidence to show that the defendant was a horse-dealer the case ought not to have gone to the jury, and the Court directed judgment for the defendant. A horsedealer signifies a person who makes his living by buying and selling horses. If the defendant were considered a horsedealer, so a farmer, a brewer, and a master of fox hounds might be so considered.

(5 Fisher, p. 274; Shirley, p. 70; Indermaur, p. 192.)

In an action for negligence causing death, must the plaintiff, in addition to proving facts from which the proper inference is that the injury was caused by the defendant's negligence, also produce evidence to negative any contributory negligence on the part of the person killed?

Bettany v. Waine and Others.

(T. 588.)

He need not, and Lord Coleridge said that if the Master of the Rolls had, in *Davy* v. *L. & S. W. Rail. Co.* (12 Q. B. D. 71), said otherwise, he must dissent from his *dictum;* and Mathew, J., pointed out that the Master of the Rolls could not have intended to lay down a rule that the plaintiff must, in an action of negligence, show that the injury did not arise from contributory negligence of the person injured, for if this were so when the negligence caused death, how could it be possibly shown that the dead man had not been guilty of negligence?

(5 Fisher, p. 753; Shirley, p. 254; Indermaur, p. 367.)

If A. sells goods to B., and B. in payment of the goods accepts a bill of exchange, and then is unable to meet the bill at maturity, and A., to whom the goods are returned, at B.'s suggestion re-sells the goods at a loss, should A. sue B. on the dishonoured bill or for the difference in price?

Brown and Others v. Stevenson and Others.

(T. 587.)

He must sue for the difference in price, as if he sues on the bill the defendant would have a defence to the action. The bill was given for the price, but as the goods were given back and had been sold, the consideration for the bill has failed.

If A. acts as commission agent for B. in backing horses at races, can B. recover money which is paid to A. in respect of the bets made by him for B.?

Bridger v. Savage.

(T. 585; W. N. 145; S. J. 605; L. T. 191.)

The Court of Appeal decided that in such a case B. can recover the moneys paid to A. for his (B.'s) use. The statute 8 & 9 Vict. c. 109, s. 18, only applied to the original betting contract, and if A. won and was paid the bet there was nothing in the statute to prevent B. recovering it from him. The case of *Beyer* v. *Adams* (26 L. J., Ch. 481), which decided the contrary, was in the teeth of other decisions, and must be overruled.

(3 Fisher, p. 1959; Shirley, p. 139; Indermaur, p. 267.)

In assessing the sum to be paid by a mortgagee in possession as an occupation rent for the premises, must the value of the property at the time the mortgagee took possession, or its subsequent value after the mortgagee has made improvements, be looked to?

Bright v. Campbell.

(S. J. 572.)

Its value at the time when the mortgagee took possession; for the Court of Appeal said the mortgagee ought not to be charged with an occupation rent with respect to an improvement which he himself had made.

(Student's Conveyancing, p. 229.)

Are trustees of a settlement justified in laying out "capital money" in the payment of the costs of the erection by the tenant for life of "silos" on the settled estate?

Broadwale Settled Estate, In re, Marshall, In re.

(T. 565; S. J. 572; L. J. 121.)

In the above case the tenant for life, having erected three "silos," applied to the Court for a direction that the trustees apply certain capital money in their hands in paying for these "silos;" and also that they apply capital money for the erection of two more "silos" which the trustees had approved. Bacon, V.-C., decided that the erection of "silos" was not an improvement for which capital-money might be used under sect. 25

of the Settled Land Act, and therefore held that the money could not be applied as the tenant for life wished. The Court of Appeal affirmed this decision, and so our question is answered in the negative. The Court of Appeal intimated an opinion that the application of capital money for works already erected by the tenant for life without any approbation ought never to be sanctioned. Further, the Court decided that on an application to the Court respecting the mode in which capital money shall be applied, the tenant for life should not be represented by the counsel representing the trustees.

(Student's Conveyancing, p. 385; and as a note to sect. 25, sub-sect. xi. of the Settled Land Act, 1882.)

If A., B. and C. are trustees of a will, and C. goes out of the jurisdiction, will the Court, on the application of A. and B., appoint D. as trustee in C.'s place when C. resists his removal?

Cowdery, deceased, Re.

(S. J. 591; L. T. 192.)

Chitty, J., said that such a case fell within sect. 32 of the Trustee Act, 1850, which gave the Court jurisdiction to appoint new trustees wherever it was expedient; and as a letter from C. showed that he had some view to a permanent residence abroad, he made the order asked. This decision follows *Bignold's Trusts, In re*, L. R., 7 Ch. D. 223.

If a bailiff, for the purpose of entering a dwelling house to distrain for rent, finds a window slightly open, is he justified in opening it sufficiently wide to enable him to effect an entrance?

Crabtree v. Robinson.

(S. J. 592.)

He is. Such a course does not constitute a breaking open, and so does not render the distress illegal. The Queen's Bench Division held that while a bailiff is not at liberty to raise a closed window in order to enter the house (*Nash* v. *Lucas*), yet if he finds the window at all open he may lawfully raise it higher in order to effect an entrance.

(3 Fisher, p. 469; Shirley, p. 301; Indermaur, p. 68; 2 Law Notes, p. 342.)

Does a solicitor incur any, and if so what, liability by taking a mortgage from a client to himself containing an unusual power of sale without explaining the nature of the power to the client?

Cradock v. Rogers.

(T. 556; W. N. 134; S. J. 574; L. T. 174.)

He is liable for all damage caused to the client by the sale being made at an undervalue.

(Fisher on Mortgages, p. 464; Student's Conveyancing, p. 221.)

If a creditor induces a debtor to execute a deed, assigning his goods for the benefit of his creditors in consideration of the creditors giving him a discharge, is the creditor bound if he does not execute the deed?

Gurneys, Alexander & Co. v. Reynolds and Another.

(T. 592.)

The plaintiffs sued the defendants for a balance due on their banking account. The defendants, by way of defence, pleaded a deed by which they had assigned their goods for the benefit of their creditors, and by the deed had obtained a discharge from their debts, including the debt the subject of the action. The deed was not, however, executed by the plaintiffs, but the defendant showed that it was at the instigation of the plaintiffs that the deed had been executed, and the question which we have set out came before the Divisional Court to decide; and it was held that the bankers were bound by the deed just as if they had executed it. Grove, J., said that the Court had difficulty in arriving at a decision, as the bankers had not executed the release; but as the evidence showed that the bankers had attended the meeting and taken part in the discussion which led to the execution of the deed, they were bound by the deed as if they had executed it, even though it was not shown that the bankers had acted under the deed. It was sufficient that the debtor had, in executing the deed, acted upon the bankers' concurrence in it.

(Snell, p. 88; Aids, p. 17.)

If a passenger put his portmanteau into a carriage, and the train moves on before he is himself able to get into the carriage, and the portmanteau is lost, are the company responsible for the loss?

Haywood v. The Metropolitan Rail. Co.

(T. 578.)

The company is not liable unless the plaintiff

can show that the train started too quickly, or that there was some other negligence on the part of the company or its servants conducing to the loss.

(1 Fisher, p. 2000; Shirley, p. 58.)

Can the Court, under the Settled Land Act, 1882, authorize a sale by the tenant for life of the mansion-house and quasi heirlooms where an express power of sale is given to the trustees by the settlement? If so, could the "capital money" raised by such sale be used in (1) establishing a proper system of drainage for a house forming part of the settled estate; (2) securing a proper water supply therefor; (3) building new stables; (4) adding a wing to such house?

Houghton Hall Estate, Re.

(W. N. 151; S. J. 624; L. T. 211.)

Bacon, V.-C., answered both these questions in the affirmative.

(Student's Conveyancing, p. 384; and as a note to sects. 15, 25 and 37 in books on Settled Land Act.)

If in a contract for sale it is provided that the vendors (of whom there were seven) should, if required, make a statutory declaration as to a matter affecting the title (which was to be taken as conclusive proof), and one of the vendors dies before the declaration has been asked for, can the purchaser be compelled to accept a declaration by the surviving vendors?

London Land Company v. Harris.

(W. N. 137; S. J. 173; L. J. 124; L. T. 157.)

Pearson, J., held that the purchaser could not be compelled to accept any declaration except that for which he had bargained, and so our question is answered in the negative.

(Student's Conveyancing, p. 48.)

Does a parent, who sends a child to a Board school without the penny fee prescribed by the Board rules, incur the penalty for not causing the child to attend school, if the child is admitted to school without payment of the fee?

The London School Board v. Wood.

(T. 586; W. N. 148; L. J. 128.)

The Queen's Bench answered the question in the affirmative. Coleridge, L. C. J., said that putting *Saunders* v. *Richardson* and *The London School Board* v. *Wright* together, and looking at the terms of the Education Act, and the construction it has received, it was plain to him that the parent had not caused the child to attend the school, and this, although the child had actually been admitted without payment of the penny fee.

Can a tenant for life who, with the Court's leave under sect. 37 of the Settled Land Act, 1882, has sold chattels settled to go with the land, insist on the capital money derived from such sale being laid out in discharging incumbrances on the settled property?

Marlborough's (The Duke of) Settlement, Re.

(T. 547; W. N. 136; S. J. 572; L. J. 119; L. T. 157.)

Chitty, J., said that he could do so. Capital money derived from the sale of *quasi* heirlooms could, under the express terms of sect. 37 of the Act of 1882, be laid out as other capital money, and by sect. 21 one of the purposes for which capital money may be applied is the redemption of incumbrances affecting the inheritance of the settled lands. The fact that the chattels if not sold would, on the remainderman in tail attaining twenty-one, have passed to him absolutely, did not prevent the capital money being thus used, and, as it were, sunk into the settlement for the common good. The application of the capital money could not be so ear-marked as to ultimately devolve upon the first tenant in tail by purchase who attained twenty-one. The tenant for life, in thus using the capital money, could not be said to be committing a breach of trust, since he was paying regard to the interest of all the parties interested under the settlement.

(Enter in books on Settled Land Act as a note to sect. 37; and in Student's Conveyancing, p. 388.)

If an English solicitor practising in France is employed by a retainer sent from England to do work in France, is his bill of costs subject to taxation according to English law?

Maugham, Re.

(S. J. 576.)

Sect. 37 of 6 & 7 Vict. c. 93 applies to such a bill, and so the question set out above is affirmatively answered.

If, under a composition deed, one creditor obtains a preference which is not disclosed, can another creditor who has signed the deed of composition avoid the same?

Milner, Ex parte.

(T. 553; W. N. 133; S. J. 593; L. J. 117; L. T. 155.)

He can do so, even though the preference does not accrue out of the assets of the debtor. The facts in the above case were shortly as follows:—Certain of the creditors of one Milner, including A. B., came to an arrangement by which the debtor was to assign his property to trustees, who were to pay 10*s.* in the pound to all creditors who signed the deed. A. B., having discovered that payment had been made to some of the creditors for signing the deed by a brother of the debtor, refused to be bound by the composition deed, which he too had signed, and took bankruptcy proceedings. The Court of Appeal held that A. B. was at liberty to avoid the deed, owing to the preference which had been obtained by some of the creditors. Brett, M. R., said that it was the essence of a composition arrangement like that in question, that until the creditors who came into it oblige themselves to each other, and the debtor obliges himself to all of them, so far as the debtor is concerned all those creditors shall come in on equal terms. It was immaterial that the payment which constituted the preference was made by the debtor's brother, provided it was made with the debtor's knowledge and assent. The learned judge said he should hesitate to say that the deed could be avoided if the debtor had not assented to the payment.

(Snell, p. 87; Aids, p. 17.)

Is a company liable for the false representation made by its secretary in order to induce a person to take shares in the company?

Newlands v. The National Employers' Accident Association, Limited.

(L. J. 118; L. T. 155.)

The plaintiff had been induced by the secretary of the defendant company to take shares in the company. It was admitted that the secretary was guilty of false representation to the plaintiff in order to induce him to take the shares, and that the plaintiff relied on the secretary's representation; and on these admissions the above question arose. The Court of Appeal held that the company was not responsible for the secretary's fraud.

(Snell, p. 459; Aids, p. 125.)

If an estate is devised for the use of A. so long as he shall continue to reside on some part of the estate for a period of not less than three calendar months in each year, is A. a tenant for life within the meaning of the Settled Land Act?

Paget's Settled Estates, In re.

(W. N. 143; S. J. 590; L. J. 126; L. T. 175.)

Pearson, J., held that he was, and that the condition of residence was one tending to induce him not to exercise the powers under the Act, and was therefore void under sect. 51; and the Court allowed A. to sell the mansion-house.

(Student's Conveyancing, p. 371; and as a note to sect. 58, sub-sect. 1.)

Does a British subject by entering the military service of the Crown change his domicil?

Paxton v. Macreight.

(W. N. 143; S. J. 590; L. J. 127; L. T. 174.)

This question arose under the following circumstances:—A. B. recently died intestate. He was born in 1836, in London, where his father and mother, British subjects, were then domiciled. Four years later the father went to Jersey, and made his home there, and thus acquired a domicil in Jersey, which he retained until his death in 1856. In 1854 A. B. obtained a commission in the British army, and served with his regiment in various quarters of the globe, and ultimately died in Canada when still with his regiment. Was A. B. domiciled in England or in Jersey? Pearson, J., held that A. B. retained his father's domicil—that is, the Jersey domicil—since it was well settled that a British subject did not by entering into and continuing in the military service of his own sovereign change his domicil. Consequently, his personal property would be distributed according to the Jersey, and not according to the English, law.

(Student's Conveyancing, p. 417.)

If A. employ B., a broker, to purchase bank shares for him, can A. refuse to take the shares purchased by B., on the ground that B.'s contract was not made in accordance with the provisions of Leeman's Act, which requires certain formalities to be observed with regard to contracts relating to bank shares?

Perry v. Barnett.

(T. 580; W. N. 144; L. J. 122.)

A. can do so; and notwithstanding the fact that there is, as among the members of the Stock

Exchange themselves, a custom to ignore and disregard Leeman's Act, yet such a custom was, the Court of Appeal held, unreasonable and utterly illegal and one which could not be imposed by the brokers on their customers. A. had only authorized B. to make a legal contract for the purchase of bank shares. B., on contracting to buy the shares, had not complied with the provisions of Leeman's Act, and so had not made a legal contract, and therefore A. could repudiate B.'s contract. The custom on the Stock Exchange did not bind A., unless he was aware of it; and this had not been shown. A. was bound, of course, by legal and reasonable rules and usages of the Stock Exchange, if he employed a broker on the Exchange to act for him; but he was not bound by a rule which, in effect, defeated an Act of Parliament, at least if he was not aware of it. The fact that A. knew nothing of Leeman's Act when he instructed B. did not affect his right to take advantage of Leeman's Act, for ignorance of the law cannot be set up.

(6 Fisher, p. 22.)

Must the retainer of a solicitor to act for a highway board in opposing a bill in Parliament be under the board's common seal, so as to entitle the solicitor to recover?

Phelps and Woodforde v. The Upton Snodsbury Highway Board.

(T. 425.)

On the authority of *Arnold* v. *The Mayor of Poole* (5 Scott's N. R. 741), Lopes, J., decided this question in the affirmative, and consequently the plaintiffs, who had, under a verbal retainer by the defendants, incurred a bill of costs in opposing a bill for the construction of a certain railway from Worcester to Broom, were not able to recover their costs, although the contract was executed, since the contract of a corporation must be under its common seal, even though it is executed, in a case where the corporation represents ratepayers, *i. e.*, where it is a trustee for the public. (See *Hunt* v. *Wimbledon Local Board*, L. R., 4 C. P. D. 48.)

(2 Fisher, p. 1290; Shirley, p. 168; Indermaur, p. 188.)

Has a burial board power to raise money for the purpose of a burial ground without the consent of the vestry or the sanction of the Secretary of State?

Reg. v. The Burial Board of Kelham.

(T. 577.)

On an application by the burial board for a *mandamus* to compel the overseers to pay for land purchased by the burial board, the Queen's Bench Division held that the application must be refused, as it appeared that neither the consent of the vestry nor of the Secretary of State had been obtained to the purchase of the land proposed to be used for burying purposes, and so the question is answered in the negative.

Is an hereditary title an incorporeal hereditament within the meaning of sect. 2, sub-sect. 10, of the Settled Land Act, 1882?

Rivett-Carnac, Sir J., In re.

(T. 582; W. N. 142; S. J. 592; L. J. 123; L. T. 175.)

Chitty, J., said that it had been held in *R.* v. *Knollys* and also in *Earl Ferrers' Case*, that a dignity, though not granted of a place, was a tenement within the *De Donis* statute, and this decision confirmed his own conclusion that such a dignity was an incorporeal hereditament within the Settled Land Act, 1882; and, consequently, the present holder of the baronetcy in question could, with the leave of the Court, sell the quasi-heirlooms which devolved with the baronetcy irrespective of the circumstance that the dignity was not annexed to a particular place.

(Student's Conveyancing, p. 370; and as a note to sect. 2, sub-sect. 10, in books on Settled Land Act.)

Is a bill of sale which gives to the grantee a right to seize the goods comprised in the bill in default of payment of the money secured within seven days of demand, void?

Sibley v. Higgs.

(T. 576; S. J. 593; L. T. 175.)

It is, because it is not in accordance with the form required by the spirit of the Bills of Sale Act, 1882. There must be a specified time mentioned, and a time to be ascertained by the volition of the grantee is not a specified time within the meaning of the Act.

(Student's Conveyancing, p. 262.)

If A. sue B. for a debt, and B. pleads (inter alia) *that the debt is statute barred, and then, in replying to interrogatories delivered by the plaintiff, he admits the debt sued for, is such admission a sufficient acknowledgment to revive the debt?*

Sittingbourne and Sheerness Rail. Co. v. Lawson.

(S. J. 593.)

Coleridge, L. C. J., said that it was not. It was an acknowledgment made after action brought. The defendant was bound to answer the interrogatories, but he might still insist upon his plea of the statute, and therefore the admission was not a sufficient acknowledgment to take the case out of the statute.

(4 Fisher, pp. 1937, 1970; Shirley p. 217; Indermaur, p. 240.)

When a contract for the purchase of land names no time for completion, from what time is the purchaser bound to pay interest on his purchase-money?

Spencer Bell v. The London and South Western and Metropolitan Rail. Cos.

(T. 435.)

On the authority of *Pigott and Great Western Rail. Co., In Re*, L. R. 18 Ch. D. 146, Chitty, J., held that interest was payable from the time when possession could prudently have been taken by the purchaser, that is to say, from the time when a good title was shown. The naked right to possession was sufficient to fix the date from which the interest should run.

(Student's Conveyancing, p. 37; Dart's V. & P. 5th ed. p. 629.)

Will the Court interfere by injunction to restrain a person using the telegraphic cypher of another?

Street v. The Union Bank of Spain and England.

(S. J. 591.)

No, decided Pearson, J. Such a case was entirely outside the Court's jurisdiction. There was in such a case no legal injury, but a mere inconvenience. Anyone is entitled to adopt for a telegraphic cypher that which is not the proper name and address of any other person.

(Snell, p. 596; Aids, p. 167.)

If a bill of sale is given to secure 30l., together with the sum of 5l. for interest thereon, and the grantor agrees to pay the sum and interest then due by five equal instalments of 7l. each, is the bill void for not complying with the form given in the Bills of Sale Act, 1882?

Thorp v. Gregeen.

(S. J. 607; L. J. 132.)

It was contended that on the principle established by *Davis* v. *Burton* (2 Law Notes, p. 229) the bill was void, as the interest was not rateable, but was a "lump" sum payable by monthly instalments. The Queen's Bench Division, however, upheld the bill, and so a negative answer is given to our question.

(Student's Conveyancing, pp. 260, 262.)

If the grantor of a bill of sale carries on two distinct businesses, will the bill of sale be void for misdescription under sect. 10 of the Bills of Sale Act, 1878, if one only of the trades is referred to?

Throssell v. Marsh.

(L. T. 157.)

It will not, the Court of Appeal held, if the omission of the other description was not intended nor likely to deceive; and the onus of proving that the omission was intended or calculated to deceive lies on the person impugning the validity of the bill.

(Student's Conveyancing, p. 256.)

Is sect. 5 of the Married Women's Property Act, 1882, retrospective, so as to give to a married woman for her separate use, property, her title to which in reversion accrued before 1st January, 1883, but her title in possession after that date?

Tucker, Re, Emmanuel v. Parfit.

(T. 597; W. N. 148; S. J. 607; L. J. 131; L. T. 192.)

In *Baynton* v. *Collins* and in *Re Thompson* and *Re Hughes* (see 3 Law Notes, p. 231; and 4 Law Notes, p. 95) it was held that the operation of the section was retrospective; but in the above case Pearson, J., held that the true construction of the section is, "her title to which, *whatever that title may be*, shall accrue after the commencement of the Act," and consequently that the section did not apply where the first title, even though only in reversion, accrued before the Act. Kay, J., has come to a similar decision in *Re Adames' Trusts* (W. N. 153; S. J. 622; L. J. 130; L. T.

211); and so our question may reasonably be answered in the negative.

(Snell, p. 364; Aids, p. 106; and as a note to sect. 5 of the Married Women's Property Act, 1882.)

If a father by his will gives property to his son, and afterwards buys the son some farming stock, is the legacy satisfied as far as the value of the stock purchased goes?

Turner v. Turner.

(S. J. 573; L. J. 118; L. T. 157.)

It is a question of intention, and if it appears that the father intended that the farming stock should be taken as a satisfaction of the gift by will, then it will be a satisfaction wholly or *pro tanto*, according to the value of the stock purchased. And parol evidence would be admissible to show, not that the father by the subsequent purchase intended a revocation of the gift in his will, but that the purchase was an independent transaction, whereby the legatee received part of the legacy in advance. This follows the principle laid down in *Kirk* v. *Eddows*, 3 Hare, 509. Kay, J., said that the decision in *Grave* v. *Lord Salisbury* (3 Bro. C. C. 425) did not apply.

(Snell, p. 254; Aids, p. 60; Student's Conveyancing, p. 466.)

III.—PRACTICE CASES.

[The references under Snow, Stoney and Student's Practice, are respectively made to the last editions of Snow and Winstanley's Annual Practice, Stoney and Andrews' Judicature Practice, and Gibson and McLean's Student's Practice. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

If a solicitor, in conducting the prosecution or defence of an action, employs three counsel, must the client repay the fees paid to the third counsel?

Broad and Broad, Re.

(T. 554; W. N. 144; S. J. 574.)

The rule is that a solicitor cannot recover from his client any *unusual expense* which he has incurred in the course of an action, and the Divisional Court held that to employ third counsel was to incur unusual expense, and so our question is answered in the negative; and the solicitor would have to bear the fees paid to the third counsel himself, and this though he notified to his client that he intended to employ third counsel, unless at the same time he informed his client that the fees for third counsel would probably not be charged against the other side, but would fall upon him personally. Field, J., regretted the decision, "for the solicitors had done nothing wrong, for the case was one of some difficulty, and the master would have allowed the costs in question if he had had any discretion." The duty of the solicitor before incurring any unusual expense is clearly laid down in the judgment in *Re Blyth and Fanshawe*. The solicitor must point out to the client that such expense will not or may not be allowed on taxation between party and party, whatever may be the result of the trial. The case of *Smith* v. *Buller* (L. R., 19 Eq.) shows clearly that to employ third counsel is to incur an unusual expense.

(6 Fisher, p. 1922; Student's Practice, p. 209.)

Can an appeal from Chambers in the Queen's Bench Division be set down for hearing on motion without payment of 2l. fee demanded under article 52 of the schedule to the order as to Supreme Court Fees, 1884?

Dudley, Ex parte.

(S. J. 592; L. J. 120.)

Denman, J., stated that the question being one of practice and involving difficulty, he and Grove, J., had consulted the other judges in order that the practice might be settled. The conclusion arrived at was that article 52 did not apply to appeals from chambers, and that therefore the 2*l.* could not be demanded.

If a married woman obtains an injunction ex parte on the usual terms of giving an undertaking as to damages, must her own undertaking be accepted?

Prynne, In re.

(W. N. 144; S. J. 590; L. T. 192.)

Pearson, J., said that it must be. If her undertaking was not sufficient, she ought not to be allowed to sue without a next friend; and having regard to the provisions of the Married Women's Property Act, 1882, he did not see that the Court could compel her to sue by a next friend.

(Snow, 159; Stoney, p. 217; Student's Practice, pp. 66, 178.)

If a defendant in an action for unliquidated damages pays money into Court and at the same time denies his liability, and the plaintiff proceeds with his action, and the jury decide that the plaintiff is entitled to recover, but that the amount paid by the defendant is sufficient to satisfy his claim, in whose favour will the general costs of the action be taxed?

Whitmarsh v. Monro.

The Court of Appeal held that in such a case, as the payment into Court was a plea to the whole action, the defendant was entitled to judgment, and that he was therefore entitled to the general costs of the action.

(Snow, p. 309; Stoney, p. 210; Student's Practice, p. 93; Ord. XXII. r. 26.)

IV.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules thereto should enter the case as a note to the section or rule mentioned.]

Can a registrar in connection with bankruptcy proceedings commenced under the Bankruptcy Act, 1869, make an order setting aside a voluntary settlement executed by the bankrupt?

Herne, Re, Edwards, Ex parte.

(S. J. 574; L. J. 118.)

Under the Bankruptcy Act, 1869, nearly every power of the judge could be delegated to the registrar. But under the Act of 1883, there are several orders which must be made by the judge, and (*inter alia*) an order setting aside a settlement. In the above case, the question turned on whether the provisions of the Bankruptcy Act, 1883, applied to proceedings commenced under the Act of 1869, so as to take away from the registrar the power to make the order in question. The Court of Appeal held that the Act of 1883 did not apply, and therefore that the registrar could make the order. The powers of the registrar with regard to proceedings commenced under the Act of 1869 are expressly preserved by Rule 264 of the Bankruptcy Rules, 1883, which is not *ultra vires*, but in accordance with the spirit of sect. 169 of the Act of 1883 (sub-sect. 3).

(Robson, p. 51; Y.-Lee, p. 506; Williams, p. 296; Baldwin, p. 10; Ringwood, p. 8; Rule 264.)

In order to establish a fraudulent preference, is it necessary to inquire into the motives of the debtor when he made the transfer constituting the alleged preference?

Singleton v. Tattershall.

(L. T. 176.)

Cave, J., said that it was not, for where a debtor transfers his available property to one of his creditors under such circumstances that it is obviously his intention to prefer that creditor to the remainder, there is no need to inquire into the motives of his action.

(Robson, p. 175; Y.-Lee, p. 422; Williams, p. 236; Baldwin, p. 58; Ringwood, p. 71; Sect. 48.)

Can the hearing of a bankruptcy petition be adjourned sine die *in order to see if an arrangement which has been made with some of the creditors would work for the benefit of all?*

Watson and Smith, In re, Oram, Ex parte.

(T. 553; W. N. 133; L. T. 155.)

The Court of Appeal decided that an adjournment on such a ground could not be made—the grounds were not a "sufficient cause" within the meaning of sect. 7, sub-sect. 3. In adjourning the hearing, the registrar had not been exercising that power of adjournment which every Court must have in order to get all the materials before it, but he was taking the first step towards the dismissal of the petition, and he could not adjourn for this purpose.

(Robson, p. 221; Y.-Lee, p. 78; Williams, p. 38; Baldwin, p. 68; Ringwood, p. 5; Sect. 7.)

V.—CRIMINAL CASES.

Does 6 & 7 Will. 4, c. 37, s. 7, which requires a baker to be provided with a correct beam and scale and weights, apply to the delivery of bread from a cart to a customer who had ordered the bread at the baker's shop, and had actually seen it weighed, and the bread was merely delivered to her for her convenience?

Daniel (App.) v. Whitfield (Resp.).

(W. N. 138.)

In such a case the Queen's Bench Division held that the statute did not apply; to make the statute applicable to the sale of bread from a cart, the person charged must carry out and deliver the bread as a baker. In the case in question the sale

of the bread was in the baker's shop. (Compare *Ridgway* v. *Ward*, 4 Law Notes, p. 19.)
(Stone's Justices Manual, p. 15.)

Can magistrates under the Dogs Act, 1871, order a dog to be destroyed on the ground that it is dangerous independently of the question whether the owner was aware of the dangerous nature of the dog?

Parker v. Walsh.

(T. 583; L. T. 193.)

The Queen's Bench Division considered that the magistrate could act under the statute without paying regard to the question of the owner's *scienter*.
(Stone's Justices Manual, p. 202.)

Can there be a "false pretence" by acts and conduct, without express words, sufficient to obtain a conviction for obtaining goods by false pretences?

Regina v. Sampson.

(T. 541.)

In this case A., a farmer, having given a bill of sale of his crops, stock, &c., told B., the prosecutor, that he had these crops, &c. for sale. B., knowing nothing of the bill of sale, bought the crops, &c. for 862*l*. Was A. guilty of obtaining money under false pretences? The jury thought so, and convicted him, and the Court for Crown Cases Reserved upheld the conviction; and so our question is answered in the affirmative. Coleridge, L. C. J., said that there might be a false pretence by acts and conduct, and the very act of selling was such a pretence. It was the strongest possible representation that the party selling was the owner of the goods sold.
(Harris, p. 243.)

VI.—PROBATE, DIVORCE & ADMIRALTY CASES.

Can the Court grant probate of a missing will when the only evidence in support of the will consists of statements alleged to have been made by a testator to a witness?

Morgan, Re; Goulston v. Woodward.

(T. 590; S. J. 605.)

Even though the evidence of the witness be perfectly honest, probate cannot, under such circumstances, be granted, the Court of Appeal held, reversing the decision of Butt, J. The evidence showed that no living person had seen the will propounded, nor even a copy or draft of it; and the consequences of establishing a will on the mere oral testimony of a witness were, to the mind of Lindley, L. J., so alarming that he said he must decline to assist in bringing about such a result. Had there been evidence of a will having been in existence, and the parol testimony of the contents thereof was sufficient, the Court would have been bound to allow probate of the will on the authority of *Sugden* v. *Lord St. Leonards* (L. R., 1 P. D. 154, 235).
(Student's Conveyancing, p. 422; Harrison's P. & D. p. 50.)

If a master of a ship, to whom wages are due, allows a portion of such wages to remain in the hands of the managing owners at interest, does he thereby lose his lien on the ship for the wages?

The Rainbow.

Butt, J., held that by such an arrangement the master had lost his lien and so had no remedy *in rem*, provided the defendants were able to show that it was agreed that the managing owners should personally retain the wages instead of paying them over to the plaintiff.
(E. Smith's Admiralty, p. 70.)

If the first page of a will is duly executed, but the concluding words of the will are in the second page, which is not executed at all, can the Court decree probate of the whole document?

Malen, Re.

(S. J. 624.)

Butt, J., decided that so much of the will as was on the second page must be excluded from probate under the provisions of the Wills Amendment Act (15 Vict. c. 24), which prevented any effect being given to anything which follows the signature. The learned judge distinguished *Birt, Re* (L. R., 2 P. & D. 214), where words on the second page of the will were admitted, although the testator's signature and the signatures of the witnesses were on the first page, for in that case the words "see over" with an asterisk preceded the testator's signature, and so sufficiently connected the words on the second page with those on the first page.
(Student's Conveyancing, p. 413; Harrison's P. & D. 37.)

ERRATUM.

International Medical Hydropathic Company v. Hawes.

The order for the call in this case was made after the testator's death, and not before, as stated by us (see *ante*, p. 179); and name of case is International *Marine*, and not *Medical*, Hydropathic Co.

SECT. 5 OF THE DEBTORS ACT, 1869.

The following regulation, dated June 8th, 1885, has been made by Mr. Justice Cave respecting summonses issued under this section:—

"1. Where the amount remaining due on a judgment of the High Court exceeds fifty pounds, and the judgment debtor resides or carries on business within the London bankruptcy district, a summons under section 5 of the Debtors Act, 1869, may be issued out of the High Court without further order."

This considerably modifies the effect of the Bankruptcy Rules of March, 1885. (See *ante*, p. 135.)

Under these Rules, it will be remembered, no judgment summons was allowed to issue in the High Court without the consent of the Bankruptcy judge; but now, by the regulation above set out, such a summons can issue in the High Court for non-payment of a judgment debt of the High Court exceeding 50*l.*, provided the debtor resides or carries on business within the London bankruptcy district. In all other cases the summons will issue in the County Court of the district of the debtor, unless leave to issue it in the High Court is obtained.

THE INCORPORATED LAW SOCIETY AND THE JUDICATURE RULES.

By their report, dated the 16th June, 1885, the special committee of the Incorporated Law Society, formed to consider, *inter alia*, the working regulations under the Judicature Rules and report thereon, make some valuable suggestions which are well worthy of our readers' attention.

Their first observation is directed to Ord. XI. rr. 1 and 2, which relate to the service of writs out of the jurisdiction. It will be remembered that under Rule 1 (e) such service may be allowed when the action is founded on any breach or alleged breach within the jurisdiction of any contract (wherever made) which ought according to the terms thereof to be performed within the jurisdiction, *except when the defendant is domiciled or ordinarily resident in Scotland or Ireland.* In cases falling within the exception no service can be allowed. Rule 2, as far as actions based on contract are concerned, applies merely to the service of writs in Scotland or Ireland, when (apparently) the defendants are *not* domiciled or are not *ordinarily* resident there: service may be allowed in these cases; but in giving leave the Court is to have regard to the comparative cost of proceeding in England or in the place of residence of the defendant, and particularly in the case of small demands to the powers and jurisdiction of the Sheriff's Courts or Small Debt Courts in Scotland, and the Civil Bill Courts in Ireland. Rule 1 (e) has operated hardly on English creditors of debtors domiciled or ordinarily resident in Scotland or Ireland; and the council make the very sensible suggestion that this exception should be repealed, and that such debtors should be rendered liable to be served with a writ by leave of the Court, the Court in giving such leave regarding, as in cases under Rule 2, the comparative cost and convenience of proceeding in England or the place of residence of the defendant. The exception seems to have originated in the "clannishness" of the Scotch, who resist the interference of English Courts, and naturally prefer to be sued in their own Courts when their domicile and ordinary residence is in Scotland. At least this seems to be the opinion of the Lord Chancellor. But we think that the Scotch should, in such a small matter as this, drop their strong national prejudices and realize the idea that England, Scotland, and Ireland too, are but one country, and that the High Court is not an English Court, but a British one, which should possess equal powers in each of the three constituent countries of the kingdom.

At present the law is very one-sided, for English debtors can be sued in the superior Courts in Scotland and Ireland.

The second of the committee's observations relates to Ord. XIV. and the order authorizing signing of judgment thereunder unless the defendant satisfies the Court that he has a good defence on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend. This order is a most useful one, and all the Committee desire is to see it extended. At present a mortgagee, although he is in a position to exercise

his powers of sale, cannot (unless the mortgagor has attorned tenant to him; see *Daubuz* v. *Lavington*, 3 Law Notes, p. 136) obtain possession of the mortgaged premises by any summary process, which he well might wish to do for the purpose of delivering possession to a purchaser or a lessee. As matters now stand, if he brings an action to recover possession, the mortgagor may enter an appearance with the mere intention to delay, hinder and thwart him; Ord. XIV. r. 1, is not applicable, and the action must be prosecuted to the bitter end and go for trial in the regular way. The committee then propose that the provisions of this order should be extended to actions for recovery of mortgaged land and premises in the occupation of mortgagors, when the mortgagees are in a position to exercise their powers of sale. We should be very glad to see this proposal adopted.

Their next suggestion is grounded on the laudable desire of having questions in dispute between suitors settled at the least expense and delay possible, and of putting a stop to the common practice of postponing actions, referring them to arbitration, or otherwise deferring their final disposal, to the inconvenience, disappointment, and expense of suitors. They propose to effect this desirable consummation by making the much discussed "omnibus summons" (Ord. XXX. r. 1) of a compulsory nature, and by this means incidentally to render trial by jury, with all its many opportunities for delays, adjournments, reference to arbitration, &c., of much less frequent occurrence than it is even now. They suggest that after the pleadings in an action are closed it should in all cases (except in actions of slander, libel, false imprisonment, malicious prosecution, seduction or breach of promise of marriage) be compulsory to take out a general summons for directions as to how the action shall be tried or otherwise disposed of, and that the directions so given should be followed, the party dissatisfied with the result being at liberty to appeal only direct to the Court of Appeal. This would give the Court power to curtail the Briton's right to have his disputes settled by a jury of his countrymen far more effectually than the Rules of 1883 curtail it. We think no rational and enlightened mind can refuse to acknowledge that, in the present state of civilization, with our present efficient judicial staff, and the fierce light which the public press throws on the proceedings of the judges, we can easily afford to dispense with juries in all purely civil cases. One man with trained legal instincts, and a mind fully adapted from experience in judging the value of evidence, in grasping its truth or otherwise, and estimating its bearing on the case, is no more likely to come to a wrong conclusion upon a disputed state of facts than twelve men: we think our present judges can be fully trusted to decide disputed facts without assistance, and, indeed, personally we would rather place our case in the hands of a judge than in those of a jury. That this is also the feeling of the community at large is, perhaps, testified to by the growing number of cases in which parties are willing to entrust the decision of their disputes to arbitrators and umpires. Any proposal then which makes for the limitation of the employment of juries is, in our opinion, worthy of commendation.

The next proposal is suggested by the praiseworthy desire of abolishing the unnecessary expense to which suitors are put by the operation of Ord. XXXI. rr. 26 and 27. These rules, it will be remembered, require a party seeking discovery to pay a deposit of 5*l.* at least into Court, and provide that no discovery need be made unless and until such payment has been made. This is reasonable enough, and is well calculated to deter reckless or malicious persons from asking for discovery where the same is unnecessary. But the matter with which fault is found is the subsequent disposal of the money paid into Court. As things stood, until recently, if the action was settled and did not go for trial, the deposit could only be taken out on obtaining an order for that purpose. Thus, even if the parties agreed to settle their differences and withdrew the matter from the Court, the party who had paid in a deposit, as a preliminary to an order under which he had got leave to obtain discovery, could not get back his deposit without applying for and obtaining an order—an expensive matter it would seem, as the costs of getting out a deposit of 5*l.* amounted in one case to 2*l.* 7*s.* 4*d.* The committee suggested that in such circumstances the deposit might be made repayable upon a mere consent signed by the solicitor. This suggestion has been, to some extent, adopted, and Rule 27 (a) now provides that when a cause has been disposed of *by consent* or otherwise, and no taxation of costs is required, a taxing officer, master, or chief clerk may, either by the consent of the parties, or on being satisfied that the party who lodged the deposit is entitled to have it returned to him, give a certificate to that effect, which certificate shall be acted on and have effect in all respects as

if the same had been an order. This procedure will obviously be less expensive than that requisite to obtain an order, and the committee may be congratulated on the fact that their suggestion has led to the promulgation of a rule which must lessen the expense which, under the old rule, fell on the client and added nothing to the profit of the solicitor.

Several other suggestions emanate from this laudable desire of saving clients expense. Thus the committee point out that in the Chancery Division it takes a fortnight or three weeks to complete an order for discovery, whereas a similar order in the Queen's Bench Division is completed in two days. The delay in the Chancery Division is explained by the necessity which exists there of obtaining official copies of the paymaster's certificate of lodgment and other formalities required. They suggest, and no one can criticise the suggestion otherwise than favourably, that the practice in the Chancery Division should be assimilated to that of the Queen's Bench Division.

Again, under the existing practice a subpœna is only available for a trial, in case such trial takes place at the sittings for which it was originally issued. If the trial does not take place at those sittings a fresh subpœna must be issued; and when one comes to issue a fresh subpœna it may be found that traces of the whereabouts of a witness have been lost, and inconvenience and expense will thus be caused. They suggest that in future it should not be necessary, when a subpœna has been issued and served, to issue a fresh subpœna or to reseal and re-serve that originally issued, but that it should be sufficient to give the witness notice when his attendance is required under his subpœna.

Another dark blot on the present rules which is pointed out is the unlimited powers which a party has to appeal from orders made by masters in chambers, which powers, of course, afford the opportunity and temptation to indulge in reckless and useless expense. It is shown that an application in chambers in the Queen's Bench Division may pass through five stages—(1) Order by a master in chambers; (2) appeal to a judge in chambers; (3) appeal from judge to a Divisional Court; (4) appeal from Divisional Court to Court of Appeal; (5) appeal from Court of Appeal to the House of Lords. The committee propose to abbreviate this power of appeal, and suggest that when an order has been made by a master there should be (1) appeal to the judge, and (2) an appeal from the judge direct to the Court of Appeal, whose decision should be final, unless that Court should allow a further appeal.

The committee make another suggestion with reference to appeals, that is, that in cases tried before a judge with a jury, instead of an application for a new trial to a Divisional Court, an appeal should lie direct to the Court of Appeal, as in the case of trial by judge without a jury. They point out that the Court of Appeal has full power to draw inferences of fact, and practically to exercise the functions of jurymen, so that they fail to see the distinction between the two cases, an application for a new trial in the former case being nothing more than an appeal from the verdict of a jury. This is a reasonable suggestion, but there are two objections to it: it would vastly increase the work of the Court of Appeal, and parties applying for a new trial might wish to have their dispute settled a second time by a jury; and, indeed, in some cases, as libel, slander, &c., they have at present the right, when a new trial is ordered, to have the disputed facts so settled. If an appeal was substituted for a new trial, there would no longer exist the possibility of having the second trial taken before a jury. A party might very reasonably ask why, if it seemed fair that the matter should be inquired into again, it should not be gone into under the same circumstances and before a similarly constituted tribunal to that to which it was first submitted. It might, indeed, be a saving of expense and delay to suitors if an appeal to the Court of Appeal were substituted for a new trial, but we think, on the whole, the present rules are more satisfactory, and that if a party can show that, for some reason or other, the first trial has not been satisfactory, he is entitled to have a second trial carried out under precisely the same circumstances as the first.

Another useful suggestion for saving time and expense is that in the Chancery Division each judge should set apart one day in each week in chambers to hear all matters adjourned from the chief clerk. They bring forward in support of their recommendation the startling fact that an adjourned summons has in one case been pending for so long as twelve months before being disposed of. This is, of course, a disgraceful state of affairs, and calls loudly for amendment some way. This is apparently felt by the judges themselves, for one of them since the suggestion was made has set apart one day in the week to hear matters

in chambers, when he hears counsel and solicitors. The state of business in the Chancery Division calls for further reform in the opinion of the committee, and no one will, we think, be inclined to disagree with them. They warmly advocate the appointment of an additional judge in this Division, with an adequate staff of chief clerks and other assistants. This is a reform we would very gladly see carried out. There is no doubt that the present staff is sadly overburdened. Recent legislation has increased the number of matters coming within the exclusive jurisdiction of the Chancery Division: a greater amount of work is thrown on the judges and their subordinates, without a corresponding increase in the number of the staff. Further, to expedite the progress of business in the Chancery Division, the committee recommend that orders made in certain cases in chambers be drawn up by the chief clerks. These matters include discovery, orders for service out of the jurisdiction, for payment into Court, procedure under the Vendor and Purchaser Act, the Conveyancing Act, the Settled Land Act, administration generally, and limited administration under Ord. LV. This suggestion can hardly be adopted until the present work of the chief clerks is lightened, by the appointment of additional ones.

The last suggestion they make with regard to the general Rules of Court is as to the new regulation for continuing the sittings of the Courts till the 12th of August, and resuming them on the 24th of October. They express themselves in favour of shortening the Long Vacation, and suggest that it ought to begin earlier, and end earlier. They suggest that it should commence on the 1st of August, and end on the 12th of October. This is not a very revolutionary change. As matters stand, the vacation lasts seventy-four days—if the committee's suggestion were adopted it would last seventy-three days. We confess we would gladly see the vacation shortened still more: two months in our opinion is quite enough; and if it were limited to commence on the 1st of August, and terminate on the 30th of September, we think it would do no harm to anyone, and would be immensely beneficial to solicitors and the public.

Such are some of the suggestions made by the committee, and we hope that they will be taken up by the Rule Committee of the judges. They do not indeed embody all the improvements which might be made in the practice and procedure of the High Court: there are many other points in which the Rules of Court could be improved. Why, for instance, have not the committee taken into consideration the almost unbearable delay and annoyance caused to London suitors by the going on circuit of the judges, and made some practicable suggestion for reform? But half a loaf is better than no bread; and if the recommendations of the committee are carried into effect, we shall rest content for the present.

SETTLED CHATTELS, AND THE PERPETUITY RULE.

In connection with the subject of settlements of personal property, we have often been asked by our pupils—and by no means the least intelligent of them—for an explanation of a particular proviso usually inserted where chattels are settled to go with the land. We have, therefore, thought it probable that a short explanation of it might not be unacceptable to our readers, or such of them as may have experienced any difficulty on the point when reading by themselves. The proviso we refer to is the one that provides that such chattels shall not vest absolutely in any person made tenant in tail *by purchase* under the settlement, unless he shall attain the age of twenty-one years, but shall devolve on his death under that age as if they were freeholds of inheritance limited to the uses of the settlement. The difficulty in comprehending this clause arises, we think, generally from misreading it. The misconception consists in conjecturing the words "by purchase" to relate to the mode in which the title to the personal chattels is acquired; in other words, they read the sentence as if there were a comma after the term tenant in tail. Of course, the words "by purchase" relate to the mode in which the title of the tenant in tail to the lands is acquired.

The object of inserting these words is to prevent the proviso being void as offending the perpetuity rule. When a strict settlement of lands is made, an estate for life is given to a living person with remainder in tail to his first and other sons. Those of the sons who become entitled to the settled lands take by *purchase*, and not by descent; but their issue (unless the land were resettled) would take by descent. Now, any of these sons must attain majority, at the latest period, within twenty-one years after the death of the tenant

for life—unless posthumously born, when the additional period of gestation is allowed; so that the proviso that the personal chattels shall not vest absolutely in any tenant in tail during minority cannot possibly offend the perpetuity rule—that is, cannot possibly be assumed to direct the devolution of the chattels during a longer period than existing lives and twenty-one years afterwards—so long as the proviso is restricted to tenants in tail *by purchase*. But if the words "by purchase" were omitted, then it could be assumed to extend to other than the sons of the tenant for life, namely, their descendants *in infinitum*, and there thus being a possibility (even though there were no probability) of the proviso preventing the vesting of the property in the chattels for a longer period than that prescribed by the rule against perpetuities, the proviso would be *ab initio* void.

To illustrate by an example:—Suppose lands are settled on A. for life, with remainder to his first and other sons in tail. A. afterwards has two sons, B. and C. On A.'s death, B. becomes entitled (by purchase) to the lands. Now if B. be an infant, until he attains twenty-one the chattels, by virtue of the proviso, never vest absolutely in him, and if he dies (without leaving issue) before attaining twenty-one, they go under the trusts of the settlement to C., in whom also they will never vest absolutely during minority, for he also takes by purchase. But suppose B. leaves an infant son: this son acquires the lands, not by purchase, but by *descent*, and therefore the proviso does not extend to him, and consequently the chattels will vest absolutely in him during his minority.

If the words "by purchase" had been omitted, the proviso would have implicitly extended to (*inter alios*) this grandson, and, as there was a possibility at the time of making the settlement of the grandson not attaining majority within twenty-one years after the tenant for life's death, would have offended the perpetuity rule, and been absolutely void. A similar proviso is also necessary where leaseholds for years are settled in a strict settlement, they also being personal property. This, we hope, will explain the reason of the words "by purchase" being inserted.

We might add that if the settlement were a post-nuptial one, and the tenant for life had issue living at the time of making the settlement, the restriction of the proviso to tenants in tail by purchase might unnecessarily curtail its application, for it might be made to include tenants in tail by descent, provided care was taken that it should not by any possibility affect the devolution of the chattels, or prevent them vesting for a longer period than twenty-one years after the existing lives.

The misconception which gives rise to the difficulty is due, we think, to a confusion of ideas in the student's mind; he knows that settled chattels are commonly called "heirlooms," without even the prefix of the distinguishing and differentiating "quasi;" that heirlooms descend to the heir; that purchase is the antithesis of descent; that *descent* and *purchase* are modes of acquiring title: hence his mind associates the words "by purchase" with the settled chattels—the heirlooms; and then, unable to find any rational meaning in the words, his confusion worse confounded, in his distress, instead of harking back, he resignedly concludes that by some jugglery or inscrutable magic the conveyancer is able, by inserting the words "by purchase," to circumvent the perpetuity rule. A simple illustration would have precluded the difficulty. The paucity of concrete illustrations to the abstract propositions propounded in law books is the fruitful source of perplexity to many a student.

CASES AFFECTING ARTICLED CLERKS.

I.

To what extent is a master bound to supervise the service of his articled clerk?

Duncan, In re.

(33 L. J., Q. B. 190; 10 L. T. 337; 12 W. R. 752).

In order that service under articles of clerkship may be sufficient to enable the Law Society to examine the articled clerk, in order that they may certify his fitness to be admitted a solicitor, it is necessary that the service be under *the direction and superintendence* of the master to whom the clerk is articled. The above-named Henry Thomas Duncan, having been a managing clerk for upwards of ten years, was articled for three years under sect. 4 of 23 & 24 Vict. c. 127, and in due course he presented himself for the Intermediate Examination; and as far as his answers to the examination questions were concerned the examiners expressed themselves quite satisfied with Mr. Duncan's acquirements; but they were not satisfied that his service under articles had been

a sufficient service to enable them to give the required certificate that the articled clerk in question had duly passed his Intermediate Examination, and the case was brought before the Court that it might decide the momentous question as to service. The evidence showed that the questions as to service, which have to be answered before a candidate for the Law Society's Intermediate Examination can present himself, had been answered by both articled clerk and master; but that the answers were not in the usual simple form, for in the answer of the master the following facts appeared. The master had offices at 80, Basinghall Street, London, and also at 75, King Street, South Shields. The South Shields office was opened when Mr. Duncan was articled. Mr. Duncan resided in South Shields and transacted business under the direction of the master, who resided in London. Mr. Duncan occasionally went to London. The master was at South Shields during the first year of the articles, and also during the second year thereof, for not more than a month altogether in each year. Mr. Duncan was in London several times during these two years. Mr. Duncan received a salary. He made a report to his master of business coming in, and all new business was referred to the master. Mr. Duncan was not allowed to advise without the instructions of the master.

The answers of Mr. Duncan corroborated the above, and, in addition, showed that the course of proceeding on a conveyance or mortgage was that on Mr. Duncan receiving instructions, he forwarded them to his master in London, who settled and approved the draft and finally returned it. The age of H. T. Duncan was thirty-three years.

The examiners, who were themselves satisfied that the service relied on did not comply with the requirements as to service of the 6 & 7 Vict. c. 73, merely wished for the Court's advice in the matter; and if the Court thought that the service was sufficient, they were willing and ready to grant their certificate that Mr. Duncan had satisfactorily passed the examination.

Cockburn, C. J., said the fact that Mr. Duncan had acted for twelve years in the capacity of a managing clerk in the office of an attorney made all the difference. When any question of due service under articles arose each case must stand on its own merits. Supervision is very essential to a good service, but such matters are relative; and when a case arises where there has been a long service, and a familiarity with what is required from such a person, taking into consideration, also, the mature age of the clerk in question, less stringent supervision may be requisite than in the case of a young man who has just entered into his profession. The business at South Shields must be taken to be the *bonâ fide* business of the master, and it must, also, be taken that the master had the control over it. Under the circumstances, therefore, without laying down the case as a precedent, the service was held to be sufficient.

The extent, then, to which supervision of service during articles is necessary, depends on the particular circumstances of each case, but it is clear from the decision of *Re H. T. Duncan*, that the Court does not require the same strictness of supervision in the case of a clerk who, previous to his articles, has been a long time engaged in a solicitor's office, as it would in the case of a clerk who had not been so previously engaged; and we may take it that had Mr. Duncan been an ordinary articled clerk for five years, and not a ten years man, his service would have been held to be insufficient for want of that superintendence and direction of the master which Act of Parliament so properly requires.

NOTES ON THE FINAL.

Slaughter with a vengeance! 113 candidates were postponed at the June Final. We anticipated that a great many would be sent back, as the questions set were searching, but we never dreamt of so large a number as this.

Students will have to be more studious. Less billiards and more books in future. The Law Society never postpone a candidate who has done his work thoroughly and well; this we know from much personal experience; and students for the Final cannot too soon take to heart the fact that it is useless to "cram" for the examinations as conducted at the present day.

The Honors result is to the same tune. Of 92 candidates 18 only succeeded in figuring in the Honors list. If the standard for Honors is the same at each Examination, and the system of marking the same, how is it that while at Easter out of 31 candidates 16 qualified for Honors, at Trinity out of 92 candidates only 18 qualified? Can it be the April men's knowledge was so far superior to those who competed in June?

Two men only in the third class—what a change! In June, 1884, there were 6 men in this class; in June, 1883, 11; and in June, 1882, 20.

What is the reason of this falling off? We can answer for it that it is not because the candidates know less. Clearly the standard for Honors is very much up, and men who, since the separate Honors Examination was established five years ago, would have taken a good place in the Honors list, do not get a place at all.

Still all the more credit for those who gain Honors; and let us here give a word of advice to articled clerks. To secure a place in the Honors list at the present time is a grand advertisement. A place anywhere in the list is most useful in obtaining a berth, for solicitors begin to know that a man must be made of good stuff to get Honors, and so in seeking partners or clerks give preference to those who have secured Honors.

We mention this because we come across so many articled clerks who think that Honors are not worth having. That this is a mistake we have no manner of doubt. We have the pleasure of knowing a good many men who have recently taken Honors (first, second and third class), and we should, if wishing for anyone to assist in our practice, most certainly give them the preference.

We give below the Honors List. It will be observed that the Clifford's Inn Prizeman has again obtained 10*l.* 10*s.* for his prize. This prize has been increased at the last two Examinations owing to the council having money in their hands which ought to have been used for prize money at some of the past Examinations when candidates did not reach the required standard for a prize. We hope that it will be found possible to always augment this prize. Ten guineas is little enough for the second prizeman.

Being interested ourselves, and knowing that our readers would also be interested, in ascertaining why the value of the Clifford's Inn Prize was raised at the April Final, we wrote to the secretary of the Law Society for information, and the following is a copy of a letter he was kind enough to write us:—

"*25th June*, 1885.

"Dear Sir,—In answer to your letter of the 23rd instant, I beg to say that the value of the Clifford's Inn Prize for the June Examination was increased to £10 10*s.*, in consequence of the council having at their disposal prize money which they were unable to distribute on previous occasions, owing to the fact that no candidate came up to the required standard.

"I am, dear Sir, yours faithfully,
"E. W. Williamson, *Secretary.*

"A. Gibson, Esq., Law Notes Office,
"27, Chancery Lane, W.C."

The First Prize is well worth working hard for. Besides the grand honour of being first of so many good men, from a mere monetary point of view the prize is far from being contemptible. Thirty-five guineas goes some considerable way in starting a library for a young solicitor, and this is what each First Prizeman now gets.

Prizemen Nos. 3 and 4 were, as will be seen from the list, bracketed. This is the first time that two candidates have been bracketed by the Law Society within our personal memory. As the two were equal, we do not suppose that the candidate who is placed fourth in the list will feel quite satisfied, since he is only a Prizeman of the Incorporated Law Society, whereas the third in the list is the New Inn Prizeman; and, as such, wins greater honour than the man who is bracketed with him. We think the Law Society made a mistake. Surely they were not quite equal? And, if they were, ought not the Pass answers to have been looked to? Anyway, if bracketed, they ought both to be New Inn Prizemen.

We have received the Notice from the Law Society respecting the Final Examinations for 1886. It appears to be merely a reprint of the Notice issued for 1885. We extract the following from it.

The subjects in which candidates are required to pass are—(1) The Principles of Law and Procedure as administered in the Chancery Division. (2) The Principles of Law and Procedure as administered in the Queen's Bench Division. (3) The Principles of the Law of Real and Personal Property, and the Practice of Conveyancing.

The optional subjects are—(1) The Law and Practice of Bankruptcy. (2) Criminal Law and Practice, including proceedings before Justices of the Peace. (3) The Law and Practice of the Probate, Divorce and Admiralty Division, and Ecclesiastical Law and Practice.

We regret to find that candidates are still kept in the dark as to the value of doing papers on these optional subjects.

The Examinations are to be held at the Hall of the Society, Chancery Lane, on the following days:—

Tuesday and Wednesday,		Jan. 12th and 13th.
,,	,,	April 6th and 7th.
,,	,,	June 22nd and 23rd.
,,	,,	Nov. 2nd and 3rd.

Candidates whose articles expire between 10th January and 15th April may present themselves at the January Examination. Those whose articles

expire between 14th April and 22nd May at the April Examination. Those whose articles expire between 21st May and 2nd November at the June Examination. And those whose articles expire between 1st November, 1886, and 11th January, 1887, at the November Examination; and, of course, at any subsequent Examination.

The last days for giving notice are:—

For the January Examination:—30th November; or a renewed notice, 28th December, 1885.

For the April Examination:—22nd February; or a renewed notice, 22nd March, 1886.

For the June Examination:—10th May; or a renewed notice, 7th June, 1886.

For the November Examination:—20th September; or a renewed notice, 18th October, 1886.

The fees are 5*l.* for an ordinary notice, and 2*l.* 10*s.* for a renewed notice. Fee for Honors 1*l.*

The Honors rules remain exactly the same. The following is a copy of them:—

"Terms used in these rules have (unless inconsistent with the context) the same meanings as they have in the regulations made by the Society on the 27th November, 1877, as to the Preliminary, Intermediate, and Final Examination of persons intending to become solicitors of the Supreme Court (hereinafter referred to as 'the regulations').

1. No honorary distinction (except local prizes already instituted) will be awarded by the Society to any candidate in respect only of the Final Examination. All honorary distinctions awarded by the Society will—with the exception mentioned—be awarded to candidates who pass the Honors Examination as hereinafter mentioned.

2. There shall be held in the Hall of the Society, or in such other place as the council may from time to time appoint, four voluntary Examinations for Honors in each year. The Examinations shall take place on such days as the council may from time to time appoint.

3. The Examination committee shall, with the assistance (so far as they may think proper to resort to the same) of the examiner or examiners to be appointed for the purpose by the council, conduct the Honors Examinations.

4. The council may, from time to time, by resolution, appoint such competent person or competent persons as they may see fit to be an examiner or examiners to assist the committee in the Honors Examination, and the council may at pleasure remove any examiner so appointed.

5. There shall be paid to every examiner so appointed, not being a member of the committee or of the council, such remuneration as the council may from time to time by resolution prescribe.

6. The Honors Examinations shall be open to all candidates *without reference to age*, who shall, in the opinion of the examiners, have attained a certain standard of proficiency at the Final Examinations, and shall be upon the subjects specified for the Final Examinations in the regulations.

7. Every candidate who is eligible and desirous to compete for Honors shall, at the time when he gives notice of his desire to be examined at any Final Examination, give notice in writing of his desire to be examined for Honors. Forms of notice can be obtained at the office of the Society.

8. At each Honors Examination the candidates who, in the opinion of the committee, are deserving of honorary distinction will be arranged in three classes; and, in awarding honorary distinction, the marks obtained in the Honors Examination will alone be considered.

9. The names of candidates placed in the first class will be arranged in order of merit, and every candidate placed in that class will, in addition to a class certificate, receive a prize.

The names of candidates placed in the second and third classes respectively will be arranged alphabetically, and every candidate placed in those classes will receive a class certificate.

The certificate will be in the following or an equivalent form:—

Honors Examination.

By authority of the Council of the Incorporated Law Society of the United Kingdom.

I do hereby certify that at the Honors Examination held on the day of , 188 , who served his articles of clerkship to , was placed in the first [second or third] class.

, President.

10. The names of all candidates who attain honorary distinction will be printed in the Society's Calendar.

11. At each Honors Examination the following prizes will be awarded, unless in the opinion of the committee the standard attained should not justify the issue of any first-class list:—The Clement's Inn Prize (value 10*l.* 10*s.*); The Clifford's Inn Prize (value 5*l.* 5*s.*); and the New Inn Prize (value 5*l.* 5*s.*); or an additional Society's prize of like value; and the Daniel Reardon Prize, being the one-fourth part of the dividend on 3,333*l.* 6*s.* 8*d.* Consolidated Bank Annuities. In addition, the Society will give as many prizes (value 5*l.* 5*s.* each) as are required. The value of each prize will be expended by the Society in the purchase of legal, historical, or constitutional works, to be selected by the successful candidate, and such works will be bound at the expense of the Society, and be stamped with the arms of the Society.

12. In addition, the following prizes will be awarded according to the result of the Honors Examinations during the year, namely—

The Scott Prize, being the dividend on 1,265*l.* Preferential 4½ per Cent. London, Brighton and South Coast Railway Company's Stock (1863).

The Broderip Gold Medal, to be purchased with the dividend on 333*l.* 6*s.* 8*d.* Reduced Annuities."

We extract the following:—

JUNE HONORS LIST, 1885.

First Class.

(In order of Merit.)

Hughes, Thomas John (Bridgend). *Clement's Inn* and *Daniel Reardon Prizeman;* value altogether about 35 guineas.

Francis, Albert Edward (Halifax). *Clifford's Inn Prizeman;* value 10 guineas.

Bromfield, John Carey (Liverpool). *New Inn Prizeman;* value 5 guineas.

Hawkins, Francis Henry, LL.B. (London). *Law Society's Prizeman;* value 5 guineas.

James, Sydney Trefusis (Truro). *Law Society's Prizeman;* value 5 guineas.

Second Class.

(In Alphabetical Order.)

Brightman, William Henry (London).
Cotton, John Thomas (London).
Emerson, George (West Hartlepool).
Hilton, Charles Henry (Liverpool.
Roxburgh, William Henry, B.A. (London).
Soulby, Arthur Edward Bromehead (York).
Speed, Walter Hamlyn (Nottingham).
Taylor, George William (London).
Thomas, Evan Daniel, B.A. (Birmingham).
Wilson, Edmund Thompson Gilchrist (York).
Wood, William Reginald (Chester).

Third Class.

(In Alphabetical Order.)

Branthwaite, Robert Edward (Manchester).
May, Henry Allen Roughton (London).

Of the 394 candidates at the June Final Pass the following 281 gentlemen passed:—

T. Aitken, J. H. Ascroft, B.A., E. Ash, M.A., B.C.L., A. Atkinson, W. H. Aysom.

W. Bailey, J. Ballantyne, J. W. Barlow, R. T. Barnes, A. Barnett, E. E. Barron, B.A., J. Batten, R. W. Baxter, F. B. F. Bayley, C. M. Beaumont, A. Beldon, A. C. Blumer, J. W. Bointon, C. W. W. Bowling, R. W. Brabant, R. E. Branthwaite, G. Braund, W. H. Brightman, G. A. Bromet, J. C. Bromfield, G. L. Brown, J. L. R. Browne, L. E. G. Bryan, G. E. Brydges, W. A. Bury, A. Bush, R. Bygott.

C. H. Carr, E. J. H. Carter, W. Cartner, J. P. Chadwick, F. H. Chance, E. L. Chavasse, H. Chester, B.A., E. S. Chilcott, W. A. Childs, G. C. Chilton, E. G. Church, C. R. M. Clapp, B.A., LL.B., H. W. Clark, J. L. Coad, A. M. Cobbold, A. B. K. Collins, F. G. S. V. Cooper, A. S. Corser, A. Cotman, J. T. Cotton, H. S. Crosby, LL.B.

A. T. Daniel, W. O. David, G. Davies, J. S. Davies, R. Davis, E. F. Day, G. D. Day, B.A., LL.B., R. W. Day, C. C. S. Dean, A. W. Dennes, B.A., A. Docker, J. Dodgson, W. Doke, H. C. Duckworth, T. Dyson.

P. H. Edwards, R. H. Eggar, H. Eltoft, G. Emerson, H. C. Emery, F. W. Ensor, B.A., F. J. Evans.

R. Farrington, H. R. Fillmer, H. A. Fitzmaurice, C. W. L. Flux, A. F. de Fonblanque, R. H. Ford, P. D. Forder, J. F. Fowler, W. S. France, A. E. Francis, G. Francis, R. H. Francis, W. Furnival.

W. H. Gale, J. H. Gameson, H. G. Gandy, B.A., G. J. E. Gardner, W. J. R. Gaze, B.A., T. E. Gibson, C. E. Glascodine, E. B. Glossop, A. H. Godfrey, E. O. Goss, R. M. O. Gramshaw, M.A., C. J. Gross.

A. E. Habgood, W. P. Halliwell, C. C. Harding, H. C. Hardy, F. J. Harris, J. B. Hartland, F. H. Hawkins, LL.B., J. Heald, B.A., R. Heathcote, J. W. B. Heslop, R. Hilditch, E. H. Hill, B.A., A. E. E. Hillman, C. H. Hilton, J. F. Hirst, C. Hitchcock, J. R. Hobson, W. Holcroft, M.A., A. T. Holmes, B.A., W. F. Holtom, C. A. Hooper, A. A. Hope, E. Houghton, J. W. B. Housley, B.A., J. Howard, F. Howarth, R. Howarth, J. C. Hudson, F. E. Hughes, B.A., T. J. Hughes, A. Y. Hyland.

S. T. James, W. J. Jeeves, R. Jennings, E. B. Johnson, C. P. Jones, E. F. Jones, F. C. H. Jones, G. P. Jones, V. C. Jones.

J. H. R. Kelly, S. A. G. Kempster, F. Kershaw, A. P. Keys-Wells.

E. Lee, G. F. O. Lee, W. W. Lewis, C. C. Lob, H. Looker, W. Loveday.

T. Mackalt, B.A. R. D. Maddock, A. W. Malin, A. T. Marson, B.A., F. W. Martin, H. J. Martin, E. W. Mason, L. Mason, R. M. Mason, J. A. Maxwell, H. A. R. May, T. Meares, H. A. Morley, J. F. Morrison, E. M. Morriss, A. F. Mott, H. Mudie, T. H. Mundell, J. B. Murray.

J. A. O'Hare, W. Orford, B.A., H. Owen, W. P. Owen, F. Parkin, G. A. Peacock, F. C. Peecock, A. E. Phipps, J. Pomeroy, E. A. Prichard, E. Proctor, J. B. Prynne, S. A. Pym.

J. A. Radcliffe, J. Raley, W. G. A. Ravenor, H. B. Rendall, B.A., F. J. Reynolds, B. F. Rice, B.A., F. Richardson, J. Richardson, W. J. Robinson, W. B. Robotham, W. B. Roderick, W. H. Rowlands, W. H. Roxburgh, B.A., W. H. J. Ryder.

E. O. Savigny, E. J. C. Savory, C. Scott, F. W. Service, C. Shenton, J. C. Shepherd, W. T. Shipman, B.A., T. B. Sismey, A. Slack, A. W. Smith, C. M. Smith, B.A., J. J. Smith, T. J. Smith, W. Smith, W. T. Smith, F. H. Snow, A. E. B. Soulby, A. S. B. Sparling, W. H. Speed, J. J. Sprigge, E. Stacey, I. W. B. Stanley, C. H. Steer, C. R. Stephen, G. Streetly, F. Stunt, H. J. Swan, J. Sykes.

W. J. Tabrum, F. W. Tarbuck, G. W. Taylor, J. C. Taylor, S. Taylor, B.A., A. W. Temple, E. D. Thomas, B.A., O. B. Thomas, W. I. Thomas, A. Tickner, A. S. Tippetts, H. Tongue, W. P. Travis, E. P. Trotman, F. Trotman, E. H. Troughton, G. A. T. Tuckey, C. M. W. Turner, H. Tweed.

W. C. Vanderpump, B. B. Van Praagh, R. W. H. Venn.

H. T. Wade, B.A., A. Waldron, W. Waldy, G. B. Walker, H. C. Wanklyn, T. Ward, B.A., E. G. Watson, B.A., J. V. Watson, W. H. Watson, B. Webb, G. Webster, R. B. Weir, R. W. Welsford, B.A., LL.B., W. Whetstone, G. H. White, C. F. Whitfield, B.A., J. L. Whittle, A. D. Wilde, B.A., J. W. Wilkin, L. K. Wilkinson, A. C. Williams, J. J. Williamson, P. H. Willmot, E. T. G. Wilson, W. S. Wilson, H. Winch, W. R. Wood, T. W. Woodgate, B.A., T. H. Woodham, A. Woodward, H. Wray, G. H. C. Wright, LL.B., T. H. Wright.

F. E. Yapp, J. Yates.

NOTES ON THE INTERMEDIATE.

Between sixty and seventy candidates at the June Intermediate were postponed.

The following gives the list of those who succeeded in satisfying the examiners:—

H. P. Adcock, W. B. Allen, W. G. Allen, H. B. Ashton, S. Austin, B.A.

A. H. Baker, J. Barrowclough, T. H. Barwise, F. J. Bell, W. F. Benham, E. W. T. Bennett, E. E. Benson, G. N. Benyon-Winsor, C. Bere, B.A., H. E. R. Besant, J. A. Bird, J. W. E. Bird, J. E. Booth, H. Bostock, J. Breese, H. B. Brock, W. E. Brockbank, W. L. W. Brodie, J. W. Bromley, R. Bromley, T. Broomhead, A. C. Brown, J. Burniston.

F. H. Campbell, T. W. Carr, B.A., W. J. G. Cartwright, A. Catlow, R. B. P. Cator, B.A., G. H. Chamberlain, A. Channing, L. J. T. Chidell, J. H. P. Chitty, B.A., A. J. Clarke, T. G. W. Cloudesdale, J. H. Cobb, R. J. Cobb, F. E. Cobley, B.A., G. W. Cook, R S. G. Coombs, J. B. Cornish, T. G. Cowan, G. S. Crawshay, J. H. Crow, A. S. Curtis.

R. R. Dale, R. Dallow, A. G. Davidson, B.A., G. W. Davis, J. E. Daw, E. I. De Buriatte, C. Dickinson, C. R. Drake, W. G. Duke.

E. R. Ensor, E. Evans.

L. R. Foster, E. T. Fox, C. A. Frith, T. N. Fuller, A. J. Furbank.

F. Gardiner, H. W. G. Garnett, W. H. C. Gatty, B.A., E. S. Gerrish, G. N. Gilroy, A. B. R. Goodson, J. Graham, G. R. Gray, J. W. Green, J. St. A. M. G. Griffith.

D. Hale, B.A., R. Hancock, M. J. Hardcastle, R. B. Harris, H. Heap, W. Heeley, A. B. L. Hill, F. W. Hill, H. M. Hills, C. J. Holden, T. Holden, A. B. Horne, G. Hurst, J. H. Hutchings.

G. S. W. Jebb, B.A., T. E. Jenkyn, A. H. Jones, H. Jones, J. P. L. Jones, R. B. Jones, E. H. Jupp.

F. E. Kent, T. G. King.

H. H. Lane, H. Law, H. F. Leavers, H. Litchfield, T. D. Lomax, N. E. Lowther, G. Lumb, F. C. Lymn, F. X. Lynch, G. C. Lyne.

J. K. Mackay, L. R. Manlove, P. W. Martin, C. Martineau, B.A., J. B. Matthews, F. J. Maw, I. H. Mawson, R. B. Mayor, R. C. Meadows, P. Mellor, H. W. Michelmore, A. H. Miles, W. H. Morris, J. T. Morton, H. G. Muskett, M. T. Myers.

W. Neve, A. Norman, E. S. Norton, F. R. Nott.

J. H. Ogden.

C. J. Parker, A. H. Parkyn, W. R. Parry, T. S. Payne, R. Pease, J. W. Pickup, C. C. Piercy, J. H. Pinder, B.A., N. Plant, C. H. Potts, T. E. Powell, B.A., R. H. Prichard.

D. C. Radcliffe, D. S. Ransom, E. E. Rastrick, P. C. Ray, T. D. Reeve, A. Rhodes, W. G. Robbins, C. P. Robinson, G. H. Robinson, C. L. Ruddock, C. Russell.

H. Saltmarshe, G. N. E. H. Say, G. Sharland, G. S. Sherrington, B.A., LL.B., J. E. Shires, P. M. Smallpage, C. A. Smith, H. S. Smith, H. Smith, H. H. Smith, R. E. Smith, V. Smith, W. T. Southworth, G. S. S. Spark, B.A., L. Squarey, S. J. R. Stammers, C. D. Steele, J. Stirling, B.A., E. J. Stokes, J. H. Stokoe, T. L. Stokoe, F. H. Storry, R. C. J. Swinhoe, E. Sykes.

H. Talbot, B. J. H. O. Taylor, H. Temperley, B.A., C. C. im Thurn, B.A., J. M. Tourle, A. V. Treacher, W. H. Trow, J. Turner, R. Turner.

F. Wadsworth, W. A. Walker, W. H. Walker, F. A. Warren, E. Wathen, J. R. Watkins, W. G. Watson, C. E. White, G. A. H. White, J. White, A. A. Whitehead, B.A., J. A. Whitehead, B.A., H. G. Whitgreave, W. J. Widdowson, W. S. Wilkins, H. J. Williams, W. Williamson, W. Willoughby, B.A., G. Willson, C. F. Wilson, L. C. Wintle, A. H. Wood, F. C. Woodbridge.

We have just received the Syllabus of the Law Society respecting the Intermediate Examinations for 1886.

Stephen's Commentaries, 9th edition (excluding Books IV. and VI.), is the work again selected.

The days fixed for the Examinations are:—14th January, 8th April, 24th June and 4th November.

The last days for giving ordinary notice of the candidate's intention to present himself for examination are:—14th December, 8th March, 24th May and 4th October.

For renewed notices the days fixed are:—30th December, 24th March, 9th June and 20th October.

The fee payable on giving notice is 3*l.*, and for a renewed notice, 1*l.* 10*s.*

Candidates cannot present themselves for the Intermediate until the expiration of their half-term of service.

A printed Syllabus with form of notice can be obtained on application to the Secretary of the Law Society, Chancery Lane, London.

With regard to the question of awarding honorary distinctions at the Intermediate, the report of the Law Society submitted to the General Meeting held on the 10th July, says:—"In November last the council considered a petition signed by 750 articled clerks (supported by resolutions passed by various law students' societies) suggesting the advisability of awarding prizes and other honorary distinctions at the Intermediate Examination. The council stated, in reply, that the Intermediate Examination was merely a pass examination intended to ascertain how articled clerks were progressing with the study of particular elementary works, that they were of opinion that it should continue to be of that character only, and that it was not in the interests of students that prizes or class distinctions should be awarded in respect of it."

Possibly, considering the feeling which was expressed on this subject at the Law Students' Congress of this year, the Law Society council will reconsider the question at an early date. A resolution of so important a Congress is worth 100 petitions; and if the interests of articled clerks require it, we have no doubt the Law Society will make the necessary alteration.

The day fixed for the November Intermediate Examination this year is Thursday, November 5th,

and the last day for giving ordinary notice is Monday, October 5th. The last day for renewed notice is Wednesday, October 21st.

After passing the Intermediate, the articled clerk should throw himself, with a will, into office work, and in his spare time he can hardly do better than read the leading cases. The leading cases themselves we mean, not the epitomes of them written for students. These students' cases will come in usefully enough, but at a later stage.

We continue below our "Mems. on Stephen."

"MEMS. ON STEPHEN."

(*Continued.*)

When the Law of Primogeniture applies to Females.

(1) In the descent of the Crown; (2) with respect to female dignities and titles of honour.

Breaking the Descent.

This occurs when a person who had acquired an estate by descent conveys it to a new purchaser. In such a case the descent is broken, for on the death of the new purchaser it will go to his heirs.

How can a Person who has taken by Descent become a Purchaser of the Lands?

By *breaking the descent.* Thus, if A. took land as the heir of his mother, and he wished that on his death the lands should go to his heir, and not to the heir of his mother, he must break the descent and become his own purchaser. This he would do by conveying the land to B. to the use of him, A., and he would thus become the purchaser, so that on his death descent would be traced from him, and not from his mother.

The liability of the Heir to Pay his Ancestor's Debts.

Formerly, the heir was only bound to pay those debts of the ancestor for which he had been expressly bound, that is to say, the specialty debts for payment of which the ancestor had not only bound himself, but also his heirs. But at the present the heir takes the lands subject to all the debts of his ancestor, whether by specialty or simple contract, and whether the heir was named in the ancestor's bond or not. This is by virtue of 47 Geo. 3, c. 74 (as to traders), and 3 & 4 Will. 4, c. 104 (as to all persons).

Specialty Creditors and simple Contract Creditors now rank equally.

Although by the statute just mentioned, simple contract creditors of a deceased person had the right conferred upon them of being paid out of the lands of their debtors, yet, until the passing of Hinde Palmer's Act, in 1869, the specialty creditors, where the heirs were bound, were paid in full out of the lands before the other creditors received anything. But by Hinde Palmer's Act, this priority of specialty creditors is taken away in the case of debtors who have died since 31st December 1869 (32 & 33 Vict. c. 46).

The Heir is not personally Liable for his Ancestor's Debts.

The liability of the heir of lands for payment of the deceased owner's debts is not a personal one, that is to say, he is only liable to the value of the lands which come to his hands. In other words, the lands are *assets* in his hands for payment of debts.

If the Heir sells the Lands the Creditors cannot follow the Lands in the hands of the Purchaser.

In such a case, the creditors look to the heir, and he is obliged to pay their debts out of the value he received from the sale.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements expressed or made.*]

Answers to Correspondents.

JUSTINIAN.—Most certainly. Write, with full information, to the secretary.

AGENT.—An order from the judge would be necessary. Without such an order it would be dangerous to act, or to appear to act, by leaving the name as your letter suggests.

E. E. P.—Your list seems a good and exhaustive one, but you must add to it the Bankruptcy Acts, 1883 and 1884, and the Bankruptcy Rules, 1883 and 1885.

SUPERBUS.—Most certainly it does. The Act of 1878 applies to both mortgages, and requires registration. See Gibson & McLean's Student's Conveyancing (pp. 225—227), where this difficulty is discussed.

F. G. LUNDI.—We think so.

CONSTANT READER.—The heir of Phœbe A. would take. An infant can, of course, have an heir. The settlement would, as far as regards A. B. and Phœbe A., be revocable under 27 Eliz. c. 4.

H. W. C.—1. If your articles have expired, at any time; but you must give due notice at the Petty Bag Office (see Law Notes, Sept., 1884). 2. After a year a judge's order is necessary. 3. Certainly not—admission makes the solicitor, not passing the Final.

E. Gordon Callender.—Yes; application should be made to the Inland Revenue, Somerset House.

Thomas Ride.—1. No; January, 1887, will be the first Examination you can go up for, as your half term will not expire before the date of the November Examination, 1886. 2. Yes.

G. W. Hobson.—We think the decision in *Re James* would be applied in your case. The Law Society evidently consider that service when of 13 or 14 years of age cannot be regarded as real service within the meaning of the statute, which allows clerks of ten years' standing to serve for three years.

E. R. M.—Thanks; we have corrected the matter in our present Number. The head-note to the case does not, we think, require alteration.

R. W. R.—This is not a subject on which we can give any advice. Any good publisher would tell you at once.

Harry Clifton.—Thanks. Your letter arrived too late for insertion in our July Number.

S. W. F.—A judge's order obtained on summons.

Brutus.—Certainly, you have plenty of time to effectuate your object if you read wisely and well.

B. Walters.—Yes.

A. T. B.—(1) Certainly he is. (2) We think not; a will does not speak from the death; for this purpose the share given to the deceased son would lapse. (3) See "Notes on the Intermediate" in this Number.

Lexicon.—The subjects will not be published until July, 1886; but probably they will continue the same as at present. We cannot advise as to books in this column. If you send a list we will tell you if it will answer your purpose.

X. Y. Z. and others.—The third edition of "Aids to the Final" is now in the press, and will be published in a few days.

Alfred Horrocks.—Address the Secretary of the Law Society.

F. R. N.—See reply to Lexicon.

Correspondence.

To the Editor of the "Law Notes."

The Honors Examination.

Sir,—Why should not the successful passing of the above entitle the solicitor to wear a hood or other similar distinguishing mark of honour with his gown?

We are constantly reading and hearing of "grumbles" respecting the meagreness of the prizes awarded by the Council, having regard to the amount of fees received and the extensive knowledge now required of the student; and I venture to think that a reward of this nature would be greatly appreciated by the student, and would, moreover, tend to make the examination a more popular one.

I should be glad to have, with your permission, the opinion of my fellow-subscribers on the matter.

Rectus in Curiâ.

To the Editor of the "Law Notes."

Shortening of Articles.

Sir,—Referring to the letter signed "Limb," in your issue of July, I think it would be a very unwise step to shorten the present period of articles. I fail to see any permanent advantage that would be gained by adopting such a course.

I do not agree with your correspondent that a country articled clerk can learn as much practice in three years as he can in four. And even supposing he could, it appears to me that it is no argument against the present system of five years' articles. There are, as we all know, men who may be articled for three years, and also those who may be articled for four years, but the majority of articled clerks come under the five years' system.

And how many men are there who, at the expiration of their five years, are really competent to carry on a solicitor's practice? If we look at the results of the Examinations as they are issued, we shall find that not more than three-fourths of the articled clerks in this country are competent to pass their Final Examination after a service of five years. We need look no further back than the Final Pass List in the "Times" of July 4th, from which it will be seen that out of 394 candidates only 281 were successful. And if the period of articles were shortened, there can be little doubt that the proportion of successful candidates would be smaller.

If "the powers that be" wish to maintain the profession in a good state of efficiency, they will think more than twice before they allow the present period of five years to be shortened.

Frank W. Wain.

To the Editor of the "Law Notes."

County Courts.

Sir,—As a reader of your Journal, and as an articled clerk, with your permission, I venture to submit, through your columns, a grievance arising under a recent statute, to the views of your other readers.

It has often occurred to me, while watching proceedings under the recent Bankruptcy Act, that some provision is required to economise the public time. At present the practice in the Gloucestershire County Courts is for bankruptcy to be taken first, and suitors, who as a rule are business men, are thus compelled to waste their time listening to a series of irrelevant questions, which always result in a declaration from the judge that the debtor has passed his public examination, frequently accompanied by an observation that the hour is late and further business must stand adjourned until next Court.

This, sir, I submit operates unjustly upon suitors,

and requires a remedy which might be provided by the examination of debtors before a registrar, so that ordinary Court business might proceed, and suitors and their solicitors might then perhaps receive the consideration to which they are entitled.

To continue the present practice is to make the Court instrumental in creating expense which might be avoided, and practically to inform the general public that their rights are subservient to the wishes of perhaps a verbose trustee in bankruptcy and an obstinate judge, and that their time must be regarded as of no value. H. L.

REVIEWS.

NEW WORKS.

An Analysis of Snell's Principles of Equity. By E. E. Blyth, Esq., LL.B., B.A.—This little work is intended, the author tells us in his Preface, as a companion to Snell, "with which it is to be read or rather *learned*" (the italics are our own), "chapter by chapter." Used in this way, we think that the Analysis will prove absolutely valueless—the principles of Equity cannot by any possibility be learned by rote, and we should be very sorry for the student who tried to pass the Final Examination, as it is at present conducted, with a knowledge of Equity thus acquired. To our mind, the proper mode of using the book before us would be first to read Snell carefully and conscientiously, and then to turn to the Analysis to condense his knowledge. Used thus the Analysis will be found useful. The merits of the book are good, though we find that, like the author whose book the compiler has analysed, there is a great omission in giving the decisions in recent cases, which are to our mind so much more important for examination purposes than the older cases—indeed, throughout there appears to be too slavish an adherence to the text analysed, and too little originality displayed. It is published by Messrs. Stevens & Haynes, Bell Yard.

We have also received *The Interpretation of Deeds*, by Howard Elphinstone, Esq., Barrister-at-Law, published by Messrs. Maxwell & Son; and also *An Introduction to the Principles of Equity*, by J. A. Shearwood, Esq., Barrister-at-Law, published by Messrs. Stevens & Sons.

NEW EDITIONS.

Powell's Principles and Practice of the Law of Evidence. Fifth edition. By John Cutler, Esq., B.A., and Edward Fuller Griffin, B.A., Barristers-at-Law.—The new edition of this handy and accurate volume on the law of evidence appears to have been carefully prepared and brought down to date, and this without any increase in the bulk of the book—indeed, the work is less in bulk by 10 pages than the last edition. This desirable result the editors have been able to accomplish by eliminating from the Appendix the Indian Evidence Act. The modern plan of giving in the Table of Cases references to all the reports has not been adopted, and there is no Table of Contents. In these two respects an improvement might be effected in a new edition. Our opinion of this work on evidence is that it is a most useful and valuable one to a practitioner. It is published by Messrs. Butterworth, Fleet Street, E.C.

The Student's Blackstone.—The ninth edition of these useful commentaries on the Laws of England, by R. W. N. Kerr, Esq., M.A., Oxon, Barrister-at-Law, has reached us. The work is practically an epitome of Blackstone's laws brought down to date, and the present edition appears to have been prepared with the accuracy that has characterized the earlier editions. It is published by Messrs. Wm. Clowes & Sons, Limited, Fleet Street.

LAW STUDENTS' DEBATING SOCIETIES.

Great pressure on our space has lately prevented us inserting the reports of meetings of these societies which have been forwarded to us. As many of our readers will, no doubt, be glad to know what subjects have been discussed at these meetings, we have given below a short summary of the reports which we have not had an opportunity of inserting. In future, if secretaries of the various societies will permit us to shorten their reports, we hope to give a similar summary in each number.

Birmingham.

The members of this society, at one of their meetings this year, decided by a considerable majority that the decision of the Divisional Court in *Woodgate* v. *Great Western Rail. Co.* was erroneous. At another meeting an interesting lecture on the Parallel Development of English Law and Society was delivered by W. Showell Rogers, Esq., M.A., LL.M.

Lancaster.

The members of this society discussed, and decided in the affirmative, the following question:—

"A. takes a second-class ticket from Lancaster to Carnforth, but, owing to all the second-class compartments being full, he travelled first-class. Can the railway company recover from A. the difference between the first and second-class fare?"

Liverpool.

By the chairman's casting vote the members of the Law Students' Association of this town, at one of

their meetings this year, decided the following question in the affirmative:—"A. and B., trustees, lend 2,000*l.* trust money to C. upon the security of freehold house property in N., valued at 3,000*l.* by an independent valuer appointed by A. and B. Trade becoming bad, C. becomes insolvent, the value of the property falls, and only 1,600*l.* is realized. There is no evidence to show that the value was over-estimated at the time of the loan. Are A. and B. personally liable to make good the deficiency?"

At another meeting, by a majority of 14, it was decided that if A., an infant, orders goods of B., which goods are within the legal definition of necessaries, but A., at the time he ordered the goods, had a sufficient supply of goods of a similar description, and A. is sued for the price of the goods, he can give evidence that he was already sufficiently supplied with goods as before stated, and so prevent the tradesman recovering the price of the goods supplied. And this whether the tradesman did or did not know of the existing supply.

Manchester.

The law students of this Society held their annual mock trial on May 14th. The action (*Vaxini and another* v. *Scragge and another*) was for damages for negligence. The defendants denied negligence, and raised a counter-claim against the plaintiffs. The witnesses gave their evidence in costume. The jury found for the plaintiffs on the claim, and for the defendants on the counter-claim; and "following a well-known precedent," the judge gave judgment for the defendants on the claim, and for the plaintiffs on the counter-claim.

Preston.

The law students of this town, after a good debate one evening this year, were unanimous in deciding the following question in the negative:—"A. and B., trustees, lend 2,000*l.* trust money to C., upon the security of freehold house property in N. valued at 3,000*l.* by a valuer, who is one of several recommended to A. and B. by D., who acts as solicitor, both to the mortgagees and mortgagor. Trade becoming bad, C. becomes insolvent, the value of property falls, and only 1,600*l.* is realized. There is no evidence to show that the value of the property was over-estimated at the time of the loan. Are A. and B. personally liable to make good the deficiency?

At another meeting the following amusing question was discussed, and decided by a majority of five in the negative:—"A., a bachelor, sends B., a spinster, a valentine, in which the following words are printed:

> 'I have loved you all my life—
> So will you be my own dear wife?'

and she answers by letter in the affirmative. Is there a sufficient contract on which to base an action for breach of promise of marriage?"

At another meeting the following case was argued:—"A., who died in 1826, by his will, dated in 1823, gave his property to trustees, upon trust for his wife for her life, and after her death upon trust to divide the same equally between his brother's children, with a proviso, that in case any of the children 'shall have died leaving issue, such issue shall take equally between them the share which their parent would have taken if living.' The testator's brother had three children, who survived the testator, and also had had one other child, who died in the year 1802, leaving A. B. his only child. Does A. B. take anything under the testator's will?" It was decided by a majority of two that A. B. was entitled.

Sheffield.

The members of the Sheffield Law Student's Society, at a meeting held in the early part of this year, discussed and decided in the negative the following question:—

"Does an attornment clause in a mortgage deed dated 1883, and not registered as a bill of sale, give the mortgagee power to distrain for interest in arrear?"

At another meeting, by a majority of one only, the society held that the decision in *Woodgate* v. *G. W. R. Co.*, 51 L. T., N. S. 826, was erroneous.

United Law Student's Society.

The members of this society have arrived at the following conclusions:—

(1) That the æsthetic movement has raised the standard of artistic production and improved the national taste.

(2) That the decision of the Court of Appeal in *Regina* v. *Yates* (52 L. T., N. S. 305) was wrong.

(3) That it is not desirable to extend the franchise to women.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. September, 1885. Part 9.

SOME NOTES.

WE take the most prominent position to state that our usual annual complete epitome of all important statutes will appear in the October Number. We could, of course, give a few in the present Number; but it has been shown that the convenience of readers is best met by giving them complete in one Number.

The Incorporated Law Society has held its annual general meeting, and adjourned it, and adjourned it again—for the discussion, of course, of important subjects, seriously affecting the well-being of the profession at large? Nothing of the sort: simply to allow certain members to ask whether the lavatory cost 499*l.* 19*s.* 11*d.*, or 500*l.*; what items come in under postage and sundries; how much the Society gets in costs from prosecutions; and to allow assailed members to make personal statements, and so on, and so on. Our meetings are getting as bad as the House of Commons was not so very long ago; we do not know that we can say anything more severe or condemnatory.

We are far from maintaining that the accounts are perfection; but the proper and decent way to bring about a reform is not vituperation and personalities. It must be remembered, that, as the chairman pointed out, it would be exceedingly difficult to charge the proper proportions for use of premises to the duties of the Society—first, as Society; secondly, in its capacity as Registrar, and, lastly, as Examiner for Students. Difficult, no doubt; but it should not be insuperable. Those desiring reform in that direction should move proper resolutions to that effect—not "bull-bait" the Council on the disgraceful tactics of an opposition questioning a Government. The only result of the present method is to compel many to sympathise with the Council, who are in reality desirous of reform in the direction of the accounts, and in many other matters.

We noticed with regret that on the question of the abolition of that iniquitous tax—the solicitors' certificate duty—the Society took a most erroneous course; misled, we fear, by the weight of authority brought to bear by so eminent a member of the profession as Sir Thomas Paine. It was no fit time to go to the Chancellor of the Exchequer now, said Sir Thomas. Will Sir Thomas kindly inform us when we are likely to have a "fit time" now? A big war is by some not considered an unlikely possibility. Certainly it will be no fit time then. Again, how about the accuracy of the statement that "it is not the only profession subject to some such impost?" Name, name, of that other profession? We feel strongly that at least an abstract resolution should have been recorded in favour of its abolition.

The agitators did well to discuss the question of articled clerks' fees. The whole money received by the society for fees for examination ought certainly to be spent on the articled clerks. The chairman distinctly stated, that if the expenses were properly apportioned, they would actually absorb the whole of the articled clerks' fund; in fact, it would appear that something more had been actually expended than ought to have been. This being so, there is really nothing more to be said. We suppose the most agitating agitator does not mean to hint that our chairman has deliberately made an inaccurate statement. We sincerely hope that in future the accounts will show all this. There will, then, be no excuse for attacking the chairman. If the chairman can get information sufficient to enable him to make the statement, surely the difficulty of showing it on the accounts cannot be insurmountable.

There was another resolution that caused much discussion. The desirability of extra evening meetings. No more meetings of the Society for Heaven's sake! Our present meetings already bring sufficient discredit on the profession as debaters.

It is all very well for papers when they make a mistake involving someone's character and reputation to subsequently put in a paragraph headed, "An unfortunate error." Evil of a man spreads faster than the contradiction. Both the "Globe" and the "Standard" have been guilty of this criminality during the past month. A certain solicitor was struck off the Rolls: they immediately rushed to the conclusion that a gentleman in the "Law List" of the same name was the same individual, and thereupon publish name and address. Now, it turns out that the man who was struck off the Rolls, although possessing the same name, was quite another individual, and that his name was not in the "Law List." It is high time the papers understood that a man may be "a solicitor" without being a "practising solicitor," and that only practising solicitors' names appear in the "Law List." Many of the dubious gentry the Society gets struck off the Rolls, in some way or other, do not possess certificates, and so do not appear in the "List," —and when such an one wants to perpetrate a good wholesome swindle, a name similar to an eminent name in the "List" is very useful indeed.

S

One would imagine that a man who advertises himself as "British, Foreign and Colonial Patent Solicitor, Adviser, and Negotiator," must have a pretty big business. So evidently thought our Law Society, for they considered it advisable he should discontinue the "solicitor" branch, and with this view summoned the industrious one. "Patent Solicitor," he showed, was a Yankeeism. Mr. Vaughan evidently declined to go into that point: it certainly was not an Anglicism, and a nominal penalty was inflicted, and that British, Foreign, &c., will not be allowed a "patent" for his "patent solicitor." The term and its object is sufficiently patent without any letters patent.

We were heartily glad to see that the gentleman so snubbed in the first instance by Mr. D'Eyncourt has had the pluck to summon the omnibus conductor for "doing" him with regard to the road taken by the "bus," and that Mr. D'Eyncourt has not snubbed him again, but remarked that "the practice must be stopped," and inflicted the proper fine. The incident reminds one of an old "Joe Miller" old gentlemen are fond of telling. In the days of "sixpenny buses" an old gentleman wanted to go to the Bank, and the conductor assured him that the "bus" went as far. Arrived at St. Paul's Churchyard it was found the "bus" went no further. Old gentleman indignant, grossly deceived, wanted to go to Bank, swindle, &c., &c. "Oh!" remarked the conductor—in those days called "cads," from "cadging"—"we call this the Bank." "Very well," says the old boy and pays his fare. "Here! what do you call this?" shouts the "cad," showing a threepenny bit. "Oh!" replies the old gentleman, "I call that a sixpenny," and toddles off to have a quiet apoplectic fit in a corner over his own acuteness.

Certainly, that Municipal Corporations Act seems to work very harshly. Here is another unfortunate councillor got to pay 100*l.* or more in penalties because the borough surveyor bought some disinfecting powder at his shop, the only shop in the place at which it could be bought, and he inadvertently attended meetings of the Town Council at which the items were sanctioned. Another amending Act wanted, surely!

To amuse its readers during the dull season the "Daily Telegraph" has opened a correspondence on another "Social Difficulty." This social difficulty, for a wonder, happens to be a perfectly correct and proper social difficulty. It is simply the difficulty in obtaining capable and trustworthy friends willing to act as trustees. The old old wail, the old old remedy suggested: the appointment of official trustees. When will scribbling correspondents remember that the Chancery Division is willing—a little too willing —to relieve trustees of all their responsibilities and the beneficiaries of all their benefits, if the parties will only "throw it into Chancery." What is the good of official trustees when such an excellent medium already exists for effectually disposing of the estate? Official trustees would in time only mean the same thing: officials must live, and a dead man's estate is a comfortable thing to live on. Instead of all this idle talk about "official trustees," let the public back us up in advocating a thorough and searching reform in the administration of estates in Chancery. Still that involves the assistance of lawyers, and the public want to dispense with that and its attendant expense. No doubt; but that is not possible. An average number of that intelligent body, the public, can, with rare exceptions, never totally unaided, get accounts through Somerset House, and official trustees' accounts would be much more complicated.

One correspondent on the subject certainly must have succeeded in amusing the lawyers. He stated that the system of official trustees would soon be adopted; but the lawyers are, as usual, opposed to all change which would make them conduct affairs "on business instead of legal principles." That intelligent scribbler needs to read "Hansard's Parliamentary Reports"—a fitting punishment—for the last fifty years to realise the depth of inaccuracy to which he has fallen. Again, what logically does he mean "by" business instead of legal principles. All legal principles are business principles, strictly and accurately carried out. Are all business principles legal principles? Search the records of the Court. We fear not. As an instance, how about Leeman's Act?

A railway station, most certainly, is not "a public highway," nor is it a "court or passage." We suppose every one will admit that so far the magistrate was right. However, the effect was, that a man charged with begging at a railway station could not be punished under the Vagrancy Acts. But passengers need not be alarmed at the prospect. The stations belong to the companies; beggars will be trespassers; and trespassers may be removed, if necessary, by force.

The Society of Fellowship Porters have fallen out on the construction of the rules of the society, as to the legality of a demand for a fee of 4*s.* 6*d.* from a member elected to be a "corn porter." Mr. Commissioner Kerr easily disposed of the case. He considered the rules totally invalid; and took no notice of the contention on the part of the society, that the plaintiff, when he became fellowship porter, had agreed to abide by the rules. For a wonder his Honor gave the society leave to appeal; so we shall

see, as our nurses used to tell us with the prophetic knowledge for which they are justly famed, what we shall see.

We much fear the River Thames Bill will prove a "fraud." In the first place the sections, as we shall hope to show next month, are in many cases contradictory. In the next place, what did the Lords mean by the proviso they inserted the other day, that the bill was not to interfere with or take away any legal rights riparian owners already possessed? How is this going to work? The Royal Commission advised that the public had a right to navigate all backwaters, &c. through which Thames water flowed. In many cases the right to exclude the public is one of the chief rights claimed by riparian owners. What, then, will be the effect of this proviso? We fancy the bill, when understood, will be found to have curtailed, instead of enlarged, public rights.

What is this new departure? Advertising for first-class clerks for Mr. Justice Pearson's chambers. But surely there can be no lack of applicants for an appointment of 500*l.*, and no lack of hangers-on with claims for consideration. In whose gift is the clerkship advertised? All honour to him. It is in the present age strange to find patronage used for the public benefit instead of the private good. We shall await with curiosity the name of the successful applicant.

Is it not, in the name of common sense—so frequently invoked, so seldom exercised—is it not absurd for newspapers, and the public led by them, to howl at the law and the lawyers when it happens that some peculiarly eccentric vagary of human nature has not been thought of, and a fit, proper, and summary punishment provided? The other day, a woman, in the doubtful hours of morning, exhilarated either with the freshness of the morning breeze, or something else, drove off with a hansom cab; the driver probably being in the "Shelter." Her driving evidently was erratic. She saw probably many lamp-posts, and in trying to avoid an imaginary one, came in contact with a realistic iron one, turned the cab over, and killed the horse: damage done 35*l.* or 40*l.* Remedy for cab-owner to have her summoned for driving without a licence; the magistrate in such a case cannot give damages. No, but the County Court judge can. Judging from the position of the lady defendant, a verdict for heavy damages would be extremely likely to be satisfied. But the papers lash themselves into scathing sarcasm, because the magistrates cannot in such cases award damages. How could the legislators foresee this combination? Why, probably, when the Act passed, "Cabman's Shelters" were not invented, and unattended cabs were a rarity.

We hear that the Attorney-General has advised a counsel to return a proportion of unearned fees; the question was submitted to him for arbitration. The "Globe," again! "The result," says this well-informed paper, "is the creation of the non-existent but very desirable precedent." We suppose, however, it must be pardoned for not knowing that some barristers have been for a long time past in the habit of returning fees which they had not properly earned.

We really do not want to know whether Mr. Commissioner Kerr knows anything about the Derby or not. No doubt it was kind and considerate of him to tell those present that he did not know anything about the Derby; and probably his Honor was hugely pleased at the laughter which greeted his remark, although he must not forget that laughter may be either "with" or "at" the maker of a remark. But what connection has Mr. Commissioner Kerr's ignorance about the Derby to do with the case, which was an action brought by Dowling—the Dowling of pork-pie celebrity—for pies supplied; which pies, it was alleged by the defence, were bad? The defendant, however, admitted in evidence that trade was bad at the Derby, and wrote that she hoped to sell them at the Oaks. But Mr. Commissioner Kerr had "no doubt the pies were bad;" and, as to the letter, it was "a woman's letter, and not like a solicitor's." Did his Honor mean that a solicitor can write a more cunning letter than a woman? If so, we fear his ignorance of the ways of woman is as great as his ignorance of the Derby. If he had gone there and had a pork-pie, he might have decided the other way.

Lewes Assizes have had a case of considerable interest. A boy was charged with manslaughter, in that he tied a child to the hind-leg of a cow. The cow, of course, like a dog with a tin-pot tied to its tail, commenced to run around, and the unfortunate child was killed. At the trial it was incidentally mentioned that there had been no case similar since one decided by Lord Hale. The act seemed not to have been done with malice, but in ignorance of the result. Of course he was held guilty of manslaughter, and a nominal punishment inflicted.

Congratulations to our Lord Chief Justice. His enthusiasm for America and Americans is now accounted for. To certain eyes all is rosy-tinted. Well! his Lordship has backed his opinion in the most practical manner possible, and both nations will wish him all happiness.

That certainly is a nasty "custom of the trade" which cropped up before Mr. Bridge the other day. A tradesman, although his goods were marked in plain figures, instructed his shopman to demand a smaller or greater price according to the look of each customer. The magistrate was certainly right, "the public ought to know this."

Talk about penny sensationals and Adelphi dramas! Why the law courts can beat them hollow. Here a man in the country has been claiming an estate, and the difficulty was identification. In evidence it appeared that plaintiff, when a baby, "had a mark on his thigh, about the size of a bean and known by nurses as a cherry." The doctor stated that there was no mark now, but such marks disappear in time. Nevertheless, the plaintiff was proved to be the right man. It puts one in mind of the drama, "You have a strawberry mark on your left arm." "No! on my nose." "No matter, you are—you are my long lost brother."

The case of Brown *v.* Great Western Rail. Co. appears likely to rival Smitherson *v.* South Eastern Rail. Co. There have been already—(1) Trial at assizes. (2) New trial ordered by Divisional Court. (3) Judgment of Divisional Court ordering new trial upheld by Court of Appeal. (4) New trial as ordered. (5) Application to Divisional Court for stay of execution. (6) And there will be, of course, application for new trial. Now, is not this new trial business a disgrace? If railway companies always do this when an action for damages is brought against them, we shall have to start a Plaintiffs' Railway Accident Legal Expenses Insurance Society, and insure in case we have at any time to bring an action. We make any energetic company promoter a present of the idea gratis. We suppose, in the event of our needing help in that way, they would be generous enough to give it.

In crime, as in all else, there is fashion. Recent disclosures as to criminal assaults on girls have either developed a morbid taste for that particular kind of crime, or, as we rather incline to think, the victims and the authorities are keener in prosecuting. Be the cause what it may, certain it is that the number of cases constantly appearing before the magistrates now is simply appalling. It is, however, satisfactory to find that some of the magistrates, at any rate, appear to remember the "dicta" of old criminal lawyers, that such charges are easily brought forward and exceedingly difficult to disprove, and that before committing for trial they insist on amplo evidence being forthcoming.

Last year, it will be remembered, the Greek Marriages Act was passed, having for its object the legalizing of marriages between Greeks celebrated in England according to Greek rites, which marriages it turned out were not valid. The Greek residents in England therefore procured the passing of the Act. The first case under the Act, *Zarifi* v. *Att.-Gen.*, came before the Court the other day, in which the petitioner sought to have it declared by the Court under the powers given by this Act that the marriage was valid. After some formal evidence Mr. Justice Butt declared the marriage valid. What a charming variation for the Judge of the Divorce Court!

No doubt our readers will have noted that the test action about the Penistone railway accident was heard at Manchester Assizes, and decided in favour of the company. The jury held that they were not negligent in not having an automatic brake, nor in having failed to discover the flaw in the axle. The verdict is, we suppose, all right; it seems just a little curious when the Board of Trade insist so strongly on automatic brakes being used. The deduction, of course, is that railway companies need take no notice of Board of Trade instructions or recommendations; they will certainly construe the decision in this way, and be worse than ever.

So the Hackney Coach Acts and *King* v. *Spurr* together appear to enable cab proprietors to evade liability. So says a correspondent to the Law Journal. It seems that an action was brought by a brougham owner against the registered cab proprietor for damages for collision. The cab proprietor pleaded, that although on the register, he had transferred the cab some time since; but that the new owner was not, and did not need to get, on the register till the time came for taking out a new licence. The man still on the register clearly was not liable; but we did not understand the County Court judge to say that if an action had been brought against the true but unregistered owner, the plaintiff could not have recovered damages against him. If his Honor thinks that registration is necessary before an action can be brought against a cab proprietor, he had better turn up 51 L. J., Q. B. 105, or L. R., 8 Q. B. 104, for the decision in *King* v. *Spurr*. His Honor will there find that Justices Grove and Bowen considered that the question of liability of the cab proprietor rested simply on the law of master and servant, quite irrespective of the Act. Perhaps his Honor would like to read Law Notes, September, 1883, where the subject is discussed in an article entitled "Is Cabby Liable?"

Excommunication revived in the nineteenth century is just a little startling. So evidently thought the bishop: for the very Reverend Lord Bishop found it necessary to instruct that energetic excommunicating parson to withdraw the ecclesiastical punishment. This the Rev. Cocker Adams did; but took care in a letter to make it plain that he did so only under compulsion; he still thinks that persons who do not attend church take equal rank with seducers, and ought to be excommunicated. By-the-way, through all the silly fuss over this affair we never heard what the effect was on the excommunicated one; this to people who do not attend church, and the others, is certainly the most interesting point.

Assuming that the Lord Bishop had considered the sentence properly inflicted; is it generally known that it would have been in his power to have inflicted imprisonment on the contumacious one for any period not exceeding six months? Let those who do not believe refer to 53 Geo. 3, c. 127, s. 3, still on the statute book.

Can a man who publishes a true report of some law proceedings be made liable either civilly or criminally, even although those law proceedings may be most injurious to another man? The question is going to arise on a summons granted by one of the magistrates under the following circumstances:—Tradesman A. had been fined by the magistrate for an infringement of the False Weights and Measures Act; the press duly reported the case. Tradesman B. however was not content with the limited publicity given to his brother tradesman's delinquencies. He therefore had the proceedings reprinted in the form of a handbill, which handbill he circulated about in the neighbourhood; and he, moreover, proposed to frame one for permanent exhibition in his window. Tradesman A. thereupon applies for a summons for libel, and the magistrate granted it. But the statement was true; and surely the magistrate cannot deny the existence of the other necessary requisite for a defence for criminal proceedings for libel: most certainly the publication of the statement was for the good of the public. No man would go to the expense of warning the public, by printing handbills, &c., against a tradesman who gives false weight except for the public good and his own. We fear on this point tradesman B. will come to grief. Will he be able to persuade the Court that he acted entirely for the public good? We see he is committed for trial, being, of course, allowed bail. We shall await the trial with interest.

CASES OF THE MONTH.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXIX., where further details of the case may be found.]

I.—CASES CONFIRMED, REVERSED OR ALTERED ON APPEAL.

[The references under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., Tudor, and Student's Conveyancing, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, Tudor's Conveyancing Cases, and Gibson & McLean's Student's Conveyancing, and indicate the page at which a note of the decision should be entered.]

Broad and Broad, In re.

(T. 653; W. N. 167; S. J. 670.)

The Court of Appeal affirmed the decision in this case, noted 4 Law Notes, p. 212. Lord Esher, M. R., quoted a remark of Baggallay, L. J., in *Blyth* v. *Fanshawe* (L. R., 10 Q. B. D. 207), that "the employment of third counsel was unusual in ninety-nine cases out of a hundred, especially in the Court of Appeal, where two counsel only were heard;" and Baggallay, L. J., said that he adhered to the opinion which he had expressed in *Blyth* v. *Fanshawe*.

Walter v. Emmott.

(T. 632.)

The decision of Pearson, J. (noted 4 Law Notes, p. 181), has been affirmed by the Court of Appeal.

Willoughby, Re.

(T. 652; W. N. 168; S. J. 667; L. J. 145; L. T. 280.)

The decision of Kay, J. (noted 4 Law Notes, p. 154), has been affirmed by the Court of Appeal. Cotton, L. J., said that the Court had jurisdiction to appoint a guardian to any infant British subject, wherever the infant was, and whether the infant had property or not.

II.—GENERAL CASES.

[For explanation of references, see previous heading.]

Under a gift by will of all the testator's "moneys due on mortgage, securities for money and ready money," which of the following will pass: (1) *Consols;* (2) *the apportioned part of the dividends on such consols for a period previous to the testator's death;* (3) *promissory notes;* (4) *railway debenture stock?*

Beavan, Re, Beavan v. Beavan.

(L. T. 247.)

Kay, J., decided that all would pass, as falling within the meaning of the expression "securities for money."

(Student's Conveyancing, p. 443.)

If in an action for negligence the undisputed facts admit of two reasonable constructions, one in favour of the plaintiff, and the other in favour of the defendant, can the judge draw the inference?

Brown v. Great Western Rail. Co.

(T. 614.)

He cannot; it is the province of the jury in such a case, the Court of Appeal decided, to decide between the plaintiff and the defendant; and in the above case, where the judge had drawn the inference himself in favour of the defendant, and kept the case from the jury, a new trial was ordered.

(Indermaur, p. 460.)

Can a tenant for life of a settled estate exercise, without the leave of the Court, the powers conferred by the Settled Land Act, 1882, *in a case where, prior to the 1st January,* 1883, *he had obtained a decree for administration of the trusts of the settlement by the Court?*

Cardigan v. Curzon-Howe.

(W. N. 163; S. J. 650; L. T. 246.)

Chitty, J., decided that he could, even though the administration of the trusts was still being carried out by the Court. If the sanction of the Court were necessary in such a case, a fetter would be placed upon powers which were meant by the legislature to be unfettered. The learned judge said that his decision would have been the same had the administration decree been made on or after the 1st January, 1883.

(Student's Conveyancing, p. 374; and in book on Settled Land Acts.)

If in a settlement executed on the marriage of A. and B. there is a covenant that any property acquired by B. "during the intended coverture" should be subject to the settlement, will property acquired by B. after a judicial separation between A. and herself be bound by the covenant?

Dawes v. Creyke.

(W. N. 168; S. J. 669; L. J. 147.)

Bacon, V.-C., decided that it would not, since by sect. 25 of 20 & 21 Vict. c. 85, the effect of a judicial separation was to place B. in the position of a *feme sole* in respect of any property she might acquire, and so to render inoperative the covenant to settle after-acquired property.

(Student's Conveyancing, p. 327; Wms. P. P. p. 470.)

At the trial of a probate suit, are the entries in the diary of a deceased solicitor, showing that the will in question had been executed on a particular day in the presence of the solicitor, admissible?

Esch v. Nelson.

(T. 610.)

The judge who tried the case had admitted this evidence, and on an application for a new trial it was contended that the evidence ought not to have been admitted. But it was held that as the entries were made in the usual course of the solicitor's business, and he was dead, it was clear from the authorities that the entries were admissible. Coleridge, L. C. J., said he could not consider that the entries were made merely in the solicitor's interest and not in the usual course of business, for "a solicitor must in the proper conduct of his business keep a diary, either in the shape of a book, or in that of pieces of paper pasted together."

(3 Fisher, p. 1196; Shirley, p. 337; Indermaur, p. 429.)

Ewing v. Orr-Ewing.

(L. T. 245.)

In this case (noted in 3 Law Notes, p. 4) a testator, domiciled in Scotland, made a will according to Scotch law, appointing six executors and trustees, of whom two only were permanently resident in England. Nearly all the property was in Scotland, and the other four executors resided in that country. The will was duly proved in Scotland, and an action was commenced and a decree obtained in the Scotch Court for administration of the estate.

Prior to this step being taken, an infant legatee had brought an administration suit by his next friend in the English Court, and obtained a decree; and the question arose whether the English Court could in any way interfere in the administration of the estate by the Scotch Court. The House of Lords held that the Scotch Court had not exclusive jurisdiction in such a case, and, therefore, could not prohibit the trustees from accounting to the English Court in accordance with the decree for administration made in England that the English infant plaintiff was at liberty to attend at the taking of all accounts by the judicial factor in the Scotch suit, and to make all necessary applications to the Scotch Court as if he were a party to the Scotch action.

If goods are sent by rail under a consignment note which states that the consignee is to pay the carriage, can the company insist on the consignor paying if the consignee fails to do so?

G. W. R. Co. v. Bagge.

(T. 615.)

Yes, decided the Queen's Bench Division; since the effect of the note was a request to the company to carry the goods, on the assurance that the consignee would pay the carriage, but if they did not pay it then that the consignor would pay it.

(1 Fisher, p. 2086.)

If a married woman was, at the time when the Married Women's Property Act, 1882, *came into operation, contingently entitled to a fund to which she subsequently becomes absolutely entitled in possession, does the same belong to her under the Act for her separate use?*

Ilsworth's Will, In re.

(L. T. 265.)

Bacon, V.-C., held that the woman's title to such fund must be deemed to have "accrued after the commencement of the Act" within the meaning of sect. 5, and so the fund was separate estate, and could be paid to her on her separate receipt.

[N.B.—The decision in this case is in accordance with the view taken of sect. 5 of the Married Women's Property Act, 1882, in *Baynton* v. *Collins*, (3 Law Notes, p. 231), but it conflicts with the later decision, *Re Tucker* (4 Law Notes, p. 211); and the case will, it is hoped, be carried to the Court of Appeal, so that the point as to the real meaning of the word "accrue" used in the section may be definitely settled.]

(Student's Conveyancing, p. 320; Snell, p. 375; Aids to Equity, p. 96; and as a note to the section.)

Perton's Estate, In re.

(W. N. 164.)

Chitty, J., decided that declarations by a deceased person as to his own illegitimacy were admissible in evidence.

(3 Fisher, p. 1194; Shirley, p. 338; Indermaur, p. 428.)

If A. mortgages lands to B. to secure 1,000*l.*, *and B. and C., in order to secure due payment of* 200*l.*, *part of the mortgage money, execute a penal bond in the sum of* 400*l.*, *must an action on the bond be brought within twelve years under* 37 *&* 38 *Vict. c.* 37, *or within twenty years under* 3 *&* 4 *Will.* 4, *c.* 42?

Powers, Re, Lindsell v. Phillips.

(W. N. 162; S. J. 649.)

In such a case the Court of Appeal held that the action might be brought at any time within twenty years; and they distinguished the case from *Sutton* v. *Sutton* and *Fearnside* v. *Flint* (Law Notes, p. 40), on the ground that the obligation of the bond was not to pay part of the mortgage debt, but to pay another sum equal to that part, in case the mortgagor should fail in fulfilment of the covenant contained in the mortgage deed; and consequently it could not be said that the action on the bond was to recover money charged on land.

(Fisher's Mortgages, p. 331; Student's Conveyancing, p. 207.)

If under the Settled Land Act, 1882, *the tenant for life contracts to sell the settled estate, and in order to settle questions which arise in connection with the sale it is necessary to bring an action, is the tenant for life entitled to "solicitor and client" costs or only to "party and party" costs?*

Sebright v. Thornton.

(W. N. 176; S. J. 682.)

Pearson, J., said that although the tenant for life on selling was, under sect. 53, in the position of a trustee, yet this did not entitle him to the costs which are allowed in ordinary cases to trustees, *i.e.* "solicitor and client" costs, he was merely

entitled to "party and party" costs and expenses properly incurred out of pocket.

(As a note to sect. 53 of the Act, and in Student's Conveyancing, p. 375.)

If on the death of a tenant in fee simple some trees on the estate are found lying more or less uprooted, by reason of heavy gales, do such trees pass to the real or personal representatives of the tenant?

Swinburne v. Ainslie.

(T. 678; W. N. 173; S. J. 681; L. J. 153; L. T. 280.)

Pearson, J., decided that such trees as could not live as ordinary trees were personal estate; but that such trees as were only so uprooted as to require removal for the benefit of the other trees and the pasture were real property. The Court of Appeal, however, considered that whether the trees were merely so uprooted as not to be able to live, was not the true test to apply. The real test was, whether the trees were attached to the soil or not: if they were, they were realty, whether they were so attached as to permit of growth or not; and if they were not attached, they were personalty. If the trees were fixed to the ground, so as to require some new force to remove them, they were realty; but if the trees *with their roots* were severed, they became personalty. It was a question of fact whether the uprooting constituted a severance; and the onus lay on the personal representatives to show that this was so, before they could claim the proceeds derived from a sale of the trees.

(Wms. P. P. p. 22; and as a note to *Lewis Bowles' Case.*)

Has the mother of an illegitimate child a legal claim to its guardianship?

Ullee, In re.

(T. 667; L. J. 155; L. T. 281.)

It is clear, said Chitty, J., from the words of Lord Campbell in *R.* v. *Clarke* (7 Ell. & B. 186), that she has not. In deciding who should have the custody and guardianship of an illegitimate child, regard must be had to the mother and the putative father, and the relations on the mother's side; and the guardianship would be given to such one of those persons as to the Court seemed best in the worldly interests of the child.

(4 Fisher, p. 470; Snell, p. 413; Aids to Equity, p. 109.)

If an agent is to be paid a commission if he effects a sale of property, does he earn his commission if he does nothing more than introduce the buyer?

White v. Walker, Donald & Co.

(T. 603.)

Although an agent must prove that he has been the means of bringing about the relation of buyer and seller between a third party and his principal, yet it may be sufficient, the Court held, if he merely introduces the buyer, even in a case where the whole of the negotiations resulting in the sale may have been carried on by another agent employed by his principal.

(6 Fisher, p. 15.)

If lands are devised to trustees for a life with remainders over, and there is a direction in the will that the tenant for life keep the buildings in substantial repair, on the death of the tenant for life can an action be maintained for permissive waste, and if so, by whom must it be brought?

Williams, Re, Andrews v. Williams.

(W. N. 158; L. T. 228.)

The tenant for life in such a case is liable for permissive waste, since, as he had accepted the devise, he was under personal liability in equity to comply with it; and, therefore, an action lay against his representatives after his death for such waste. The trustees were the right parties to sue, and not the remainderman. Further, the Court of Appeal held that the action might be brought more than six months after probate, as, the remedy being in equity, 3 & 4 Will. 4, c. 42, s. 2, did not apply.

(Note to *Lewis Bowles' case*, L. C. in Equity.)

III.—PRACTICE CASES.

[The references under Snow, Stoney and Student's Practice, are respectively made to the last editions of Snow and Winstanley's Annual Practice, Stoney and Andrews' Judicature Practice, and Gibson and McLean's Student's Practice. Those of our readers who possess some other book on Practice should enter the case as a note to the order mentioned.]

Where an administration action is unnecessarily brought by a person interested in the estate of the deceased person, by whom will the costs be borne?

Cope, In re, D'Anguier v. Cope.

(T. 611; S. J. 622.)

Pearson, J., said that in a case like the present, where the action had been brought against the

wishes of others interested in the estate, and the executors' accounts had been proved to be substantially accurate, and everything might have been equally well done out of Court, since the action had been productive of benefit to no one, it was but just that the plaintiff's costs of the action should be borne by his or her own share of the estate exclusively—the other parties having their costs out of the estate in the usual way. The learned judge referred to *Bartlett* v. *Wood* (9 W. R. 817) and *Mackenzie* v. *Allen* (7 Beav. 467) as showing the power of the Court as to costs.

If an infant sues by a next friend, will the Court make an order under Ord. XXXI. r. 12, that the next friend make an affidavit of documents?

Dyke v. Stephens.

(W. N. 160.)

Pearson, J., refused to make the order asked for.

(Snow, p. 369; Stoney, p. 264; Student's Practice, p. 162; Ord. XXXI. r. 12.)

If an application which, under Ord. LV. r. 2, ought to be made by an originating summons in chambers, is made by petition, has the Court a discretion to allow the petitioner the costs?

Governors of The Bethlehem and Bridewell Hospitals.

(W. N. 175; S. J. 682; L. T. 281; L. J. 155; L. T. 681.)

It was contended that the express language of Ord. LV. r. 2, prevented the Court allowing the petitioner costs in such a case; but Chitty, J., said that under Ord. LXX. r. 1, a discretion of the widest kind was reserved to the Court; and in a case where it was advisable that a petition should be used, although a summons was applicable under Ord. LV., the costs of the petition would be allowed.

(Snow, p. 575; Stoney, p. 406; Student's Practice, p. 297; Ord. LV. r. 2.)

Within what time must an appeal from an order dismissing an originating summons in Chancery Chambers be made?

Galland v. Burton.

(S. J. 666.)

At any time within a year, under rule 15 of Order LVIII., since an order dismissing such a summons is a final order made *in an action*. So decided by the Court of Appeal on the construction of Ord. I. r. 1, Ord. II. r. 1, Ord. LV. r. 3, Ord. LXXI. r. 1, and sect. 100 of the Judicature Act, 1873.

(Snow, p. 619; Stoney, p. 442; Student's Practice, p. 256.)

Must a married woman suing alone and without a next friend give security for costs in a case where she has no separate estate?

Jacob v. Isaac.

(T. 660; W. N. 168; S. J. 666; L. J. 146; L. T. 265.)

The Court of Appeal said that no security could be ordered in such a case. The Married Women's Property Act, 1882, allowed a married woman to sue in tort or contract as a *feme sole;* and as a *feme sole* was not required to give security because she had no property, so a married woman would not be. Lindley, L. J., said "he did not see how to get out of the language of the Act, though it was rather a startling consequence that a married woman should be able to engage in litigation apart from her husband, and, where she had no separate estate, should not be exposed to any liability as to costs."

(Snow, p. 672; Stoney, pp. 162, 479; Student's Practice, p. 96; and as a note to sect. 1 (2) of Married Women's Property Act, 1882.)

Does interest on costs ordered to be paid by a judgment run from the date of the judgment, or the date of the taxation?

London Wharfage and Warehouse Co., In re.

(W. N. 163; S. J. 649; L. J. 143; L. T. 246.)

Chitty, J., in deciding this question, said he had caused inquiries as to the practice to be made, and found that it was now the settled practice that interest should run from the date of the judgment.

(Snow, p. 491; Stoney, p. 600; Student's Practice, p. 219.)

If at an Assize Court an application to grant a commission to take evidence abroad is refused, does an appeal lie to the Court of Appeal?

Mellor & Co. v. The Royal Exchange Shipping Co.

(T. 66; W. N. 172.)

As a judge acting at assizes under his commission is deemed a judge of the High Court, and as,

with certain exceptions, every order of the High Court is appealable to the Court of Appeal, the above question was answered in the affirmative. But the Court of Appeal said that the jurisdiction was one which would only be exercised in extreme cases.

Can a foreign corporation having no place of business of its own in England, but having collecting agents in London, be sued in this country?

Mitter & Co. v. The Messageries Maritimes de France.

(T. 644.)

The Queen's Bench Division decided that it could not be sued, and further held that even if such a corporation could be sued here, service on the agent here would not be sufficient service.

(Snow, p. 167; Stoney, p. 132; Student's Practice, p. 84.)

Can a plaintiff, under Ord. XXVI. r. 1, give a notice of discontinuance when the defendant is an infant?

Ruth v. Taylor.

(L. T. 211.)

Yes; but not unless and until a guardian *ad litem* has been appointed, and an appearance entered for the infant. To allow a discontinuance before this had been done would be to allow him to escape the infant's costs of the action.

(Snow, p. 322; Stoney, p. 244; Student's Practice, p. 131; Ord. XXVI. r. 1.)

If a defendant pays money into Court and by mistake states that the money is paid in "in satisfaction of the plaintiff's claim" instead of, as he intended, paying it in, with a denial of liability; and on the same day as the money is paid in, a statement of defence denying liability, and pleading the payment into Court, is delivered; can the plaintiff take advantage of the mistake, i. e. *can he take the money out, and still go on with his action?*

Savage v. Payne.

(W. N. 173; S. J. 681; L. T. 280.)

The Court of Appeal refused to allow the plaintiff to take advantage of the defendant's blunder; and held that as he had taken the money out of Court he could not proceed with the action, unless he was willing to replace the money in Court.

(Snow, p. 308; Stoney, p. 210; Student's Practice, p. 93; Order XXII. r. 5.)

When a respondent to an appeal intends to object to an appeal being heard, on the ground that the notice of appeal was given too late, will he lose the costs if he fails to give the appellant notice of the technical objection he intends to raise?

Shead, Ex parte.

(W. N. 157; S. J. 639; L. T. 228.)

The Court of Appeal said that he would not; for while, as a matter of professional courtesy, a solicitor who was aware of such an objection to an appeal ought to give the appellant notice he was not bound to do so; and the fact that he had not done so could not be allowed to prejudice the respondent's right to costs if the appeal was dismissed.

(Snow, p. 613; Stoney, p. 472; Student's Practice, p. 260.)

Must a taxing master under Rule 27 (48) *of Ord. LXV., allow refresher fees for every clear day after the first five hours, or is the matter in his discretion?*

Smith v. Wills.

(W. N. 178; S. J. 684; L. T. 281.)

Pearson, J., said that as the words of the order were "may allow," the master had a discretion to say that under special circumstances he would not allow refreshers, even after the period of five hours had been completed.

(Snow, p. 696; Stoney, p. 500; Student's Practice, p. 248; Ord. LXV. r. 27 (48)).

Has the Court power to order service of an interlocutory application in an action on a foreign subject, a defendant to the action, who was resident out of the jurisdiction?

Weldon v. Gounod.

(S. J. 639.)

The Divisional Court said that service out of the jurisdiction could only be ordered when allowed by statute or rule of Court, and, as there was no statutory enactment, and no rule of Court allowed service of notice of an interlocutory application out of the jurisdiction, answered the question we have set out in the negative.

(Snow, p. 167; Stoney, p. 132; Student's Practice, p. 84.)

IV.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules thereto should enter the case as a note to the section or rule mentioned.]

If under Bankruptcy Rule 268 (*a*) *an application to commit a debtor to prison under sect.* 5 *of the Debtors Act is transferred to a Court having jurisdiction in bankruptcy, in order that a receiving order may be made, can the Court to which the transfer is made make a receiving order without any notice of the application for the order being given to the debtor?*

Andrews, Re, Andrews, Ex parte.

(T. 661; W. N. 170; S. J. 670; L. J. 152.)

Cave, J., considered that the making of the receiving order was not a mere circumstantial act necessarily consequent upon the transfer; but the application for the receiving order involved a judicial duty of the Court of inquiring into all the facts, and deciding whether it was a proper case for a receiving order; and that, therefore, the debtor was entitled to notice of the application being made.

(Robson, p. 963; Y.-Lee, p. 522; Williams, p. 439; Baldwin, 256; Ringwood, p. 194; Rule 268 (a).)

Can the Court suspend the discharge of a bankrupt under sect. 28, *when it appears that although the bankrupt has kept books up to the time of his bankruptcy, yet they had not been written up for more than three years previously to the bankruptcy?*

Bedart Freres, Re.

(T. 601.)

Mr. Registrar Murray considered that such a method of keeping books was within the meaning of sect. 28, and was a ground for suspending the discharge, since such a system would not "sufficiently disclose the bankrupt's business transactions and financial position within the three years immediately preceding his bankruptcy;" and the mere fact that materials were ready for writing up the books did not affect the question. So our question is answered in the affirmative.

(Robson, p. 706; Y.-Lee, p. 139; Williams, p. 86; Baldwin, p. 320; Ringwood, p. 128; sect. 28, sub-sect. 3.)

Are shares "chattels personal" within the meaning of the reputed ownership clause of the Bankruptcy Act, 1883?

Colonial Bank v. Whinney.

(W. N. 158; S. J. 639; L. T. 228.)

A. mortgaged shares in a railway company to B. by a blank transfer. A. was adjudicated a bankrupt while the shares were still standing in his name. A.'s trustee claimed the shares, as being within A.'s order and disposition. B. contended that shares were not "chattels personal," but were "choses in action," and so did not fall within the order and disposition clause. The Court of Appeal held that the shares were chattels personal, and not choses in action; and as they had been bought with money belonging to a firm of which A. was a member, and mortgaged for a debt due from the firm, although standing in A.'s name, the shares were in the possession of A. "in his trade or business," and consequently A.'s trustee was entitled to them.

(Robson, p. 531; Y.-Lee, p. 407; Williams, p. 199; Baldwin, p. 158; Ringwood, p. 65; sect. 44, sub-s. 3.)

Is a debtor protected from arrest for a debt from the time at which a receiving order is made, or from the time it is drawn up?

Manning, Re.

(S. J. 683.)

Under sect. 9 of the Bankruptcy Act, 1883, on the *making* of a receiving order the official receiver becomes receiver of the debtor's property, and no creditor can take any step in respect of a debt proveable against either the property or person of the debtor. In the above case the receiving order was made on the 2nd of May, but was not drawn up until July 24th; and, in the interval, a creditor had proceeded by way of attachment against the debtor, and the question we have set out arose. It was held that the debtor ought not to have been arrested, as the section gave him full protection from the date the order was *made*.

(Robson, p. 195; Y.-Lee, p. 766; Williams, p. 44; Baldwin, p. 74; Ringwood, p. 42; sect. 9 (1).)

Do sects. 37, 38 *and* 39 *of the Solicitors' Act*, 1843, *apply to bankruptcy practice, so that if on taxing a solicitor's bill of costs in bankruptcy more than one-sixth is taxed off, the solicitor must bear the costs of taxation?*

Marsh, Re, Marsh, Ex parte.

(W. N. 157.)

The provisions of these sections do not in such a case apply the Court of Appeal decided.

(Robson, p. 57; Y.-Lee, p. 623; Williams, p. 278; Baldwin, p. 326; Ringwood, pp. 105, 151; Rule 104.)

If a debtor, on being served with a bankruptcy petition, consults a solicitor as to opposing it, and the solicitor requires money to be deposited with him on account of costs, can the trustee in bankruptcy, if an adjudication is made, compel the solicitor to hand back the money received, on the ground that when he received it he had notice of the act of bankruptcy alleged in the petition?

Sinclair, Re, Payn, Ex parte.

(W. N. 178.)

Cave, J., said that the trustee had no such claim. If the trustee were allowed to recover the money from the solicitor, a debtor would find himself defenceless, because nobody would, without money being found, act for him under such circumstances.

V.—CRIMINAL CASE.

If under a local Sanitary Act a medical officer's report that the house of A. B. is unfit for human habitation, is brought before a grand jury to make a presentment thereon, has A. B. a right to appear and be heard before a grand jury?

Regina v. Aspinall and others.

(T. 605.)

As, under the Act in question, the grand jury would have a power to order the house of A. B. to be pulled down, the Divisional Court held that A. B. had a right to be heard by the grand jury; for, said Coleridge, L. C. J., it was a principle that a party should be heard whose liberty or property was to be affected by any proceeding. It would be unfair to construe the statute in question as containing a clause to the effect that the owner should have no audience.

(3 Fisher, p. 2062.)

VI.—PROBATE CASE.

A will obtained by "undue influence" is not allowed to stand. What does the term "undue influence" mean?

Esch v. Nelson.

(T. 510.)

To sustain a plea of undue influence in connection with the execution of a will there must be "coercion"—that is, there must be "the substitution of the desire of the person using the influence for that of the testator, so that the will becomes the expression of intentions which were not those of the testator, his mind not going with his act." At the trial, however, it is quite sufficient for the judge to direct the jury, that, in order to enable them to find that the will was obtained by undue influence, they must be satisfied that the influence alleged to be undue amounted to coercion.

(Harrison's P. & D. p. 22; Gibson & McLean's Student's Conveyancing, p. 409.)

CASES AFFECTING ARTICLED CLERKS.

II.

Can the Master be compelled to return any part of the Premium?

Ferns v. Carr.

(L. R. 28 Ch. 409; 54 L. J. Ch. 478.)

Our proposed series of cases affecting articled clerks will certainly be incomplete without a full consideration of the most important question involved in the case which heads our present article. The decision was briefly commented on by us in a general note, and it also appeared in our column of "Recent Cases" in the February Number this year (see pp. 35, 38); but our remarks were brief, and no discussion was there attempted of analogous cases. Moreover, the importance of the question involved to those intending to "article" themselves certainly renders this decision deserving of more attention and prominence than we have yet given it.

The facts were simple in the extreme. The ordinary every-day transaction of a father and son entering into articles of agreement with the principal; payment by the father of a premium of 150*l.*; service according to articles for about two

years and a-half, and then death of principal. Mr Ferns, the father, not unnaturally contended that a proportion of the premium ought to be refunded to him. The principal had covenanted "for himself, his executors and assigns," that he would instruct, and cause to be instructed, &c., Mr. Ferns, junior, in the principles and practice of the law. Here, then, maintained the plaintiff, was a contract, and actions of contract, it is well known, do not die with the person except they are purely personal contracts, *e. g.* to paint a picture, write a book. This, although to a certain extent a personal contract, might possibly be performed by the "executors." The principal covenanted for himself and his executors. Under that covenant the executors ought to do all that lay in their power to carry out its terms by getting the clerk transferred to some new master; or, failing that very obvious performance of their duty, let them, said the plaintiff, return a portion of the premium. The contention of counsel for the plaintiff, that a solicitor could not retire without either transferring his clerk, refunding, or being liable to an action for damages, appears equitable; although there is, as we shall see, one decision against even this contention; and the fact that the Bankruptcy Act recognizes a priority in the case of the premiums of articled clerks and apprentices seems also in favour of the plaintiff's contention.

Having put the case of the plaintiff in its most favourable light, we will now turn for guidance to previous rulings, taking in the first place those which support the plaintiff's claim. The action, no doubt, was brought on the strength of *Hirst* v. *Tolson* (2 Mac. & G. 134), in which the facts were similar; and Lord Cottenham laid down that such a claim was good, that a portion of the premium must be returned, and that it was a legal debt payable out of the assets of the deceased. In another case, *Ex parte Prankard* (3 B. & A. 257), the master refused to take back a runaway clerk, and the Court ordered a return of portion of the premium. Again, in *Ex parte Bayley* (9 B. & C. 691), and other cases, the Court has ordered a return of a portion of the premium in cases of partnerships when the partner to whom the clerk was articled died, and, owing to having the full number of clerks allowed, the surviving partner was not able to have the clerk transferred to himself.

So much, then, for cases in support of the plaintiff's contention—a very strong and well grounded contention it appears. To turn now to the defence: first, then, from the decision in *Re Thompson* (1 Ex. 864), it seems that the right at any rate is not correlative, that is to say, if the articled clerk dies, as he did in this case, two months after he was articled, the principal cannot be compelled to refund any portion. Again, in *Craven* v. *Stubbins* (10 Jur., N. S. 1189), a ward of Court desired to change his profession; his articles were cancelled, but the Court held that they had no power to order the return of any part of the premium. And, further, in the case of an unconditional dissolution of partnership, the Court in *Lee* v. *Page* (7 Jur., N. S. 768) came to a similar conclusion.

It will now be seen that case law on the point appears to be pretty equally divided, and Mr. Justice Pearson was therefore left to do the best he could with irreconcileable materials. His Lordship discovered that the decision of *Hirst* v. *Tolson* had been very severely handled in *Re Thompson*, and that while not exactly overruled, four eminent judges distinctly pointed out that Lord Cottenham was wrong in the foundation of his argument, in contending that in such a case there was any legal debt at all: there is no legal debt. Mr. Justice Pearson then very wisely fell back on the Judicature Act as the next justification for his views; if there is no debt at law, then, to carry out the spirit of that Act, he declined to make it a debt in equity. To do so would obviously be departing from the but recently patched up fusion of law and equity; the claim in a Court of law would not be maintainable, whereas in equity it would be. Then, as an argument of expediency; how to assess the damages? Instead of the clerk having lost a master, had not the master rather lost a clerk? The premium is paid as a compensation for the annoyance, sometimes positive danger, in having an articled clerk about the office during the early stage of his articles; the premium had been paid for that and earned; the remainder of the principal's premium was just accruing due, viz., the services of his clerk for the remainder of the articles, services which were then just becoming valuable. The plaintiff's last contention, that the Court had a kind of parental control over solicitors, sufficient to give it jurisdiction to make the order, was easily disposed of; the Court's jurisdiction over lawyers does not extend "to putting on contracts entered into by solicitors with other persons a different construction to that which they would receive if made between ordinary persons." His Lordship, there can be hardly any doubt, has gone directly in opposition

to previous cases; even in opposition to a case exactly on all fours with the present one. What justification does his Lordship offer for this? We fear a somewhat unsatisfactory one, that four judges had subsequently disapproved of Lord Cottenham's ruling, that in such a case there exists any "legal debt." There is, said his Lordship, no "legal debt." But is not this doing what Mr. Justice Pearson objected to do with regard to the Court's parental jurisdiction over solicitors? If a similar agreement had been entered into by ordinary individuals, and not by a solicitor, would there not have been a legal debt then? Is his Lordship quite satisfied there is no legal debt? for on this is based his whole argument.

However, except to the unfortunate plaintiff and others similarly situated, it does not, in reality, much matter which way the law is settled, for it can be easily evaded. The moral to parents is, to see that the articles they sign contain a covenant by the principal to refund portions of the premium in the event of death, varying with the period of completed service. And parents will, therefore, do well to employ an independent solicitor to peruse the articles, for the decision in *Ferns* v. *Carr*, though it will be well noted and taken advantage of by solicitors and their representatives, is not very likely to come to the knowledge of parents who are about to article their sons to the law.

SATISFIED TERMS.

Long terms of years, *e. g.*, for 999 years are not created for the purposes of occupation, but are used to secure the repayment of money lent on mortgage, or the payment of jointures and portions upon a strict settlement of land on marriage. Thus it was very usual in the olden times, though the practice is seldom followed in the present day, in mortgaging land not to convey the whole fee to the mortgagee, but merely to demise the land to him for a term of years. For as the mortgagee only took the land as a security for the money, it was thought more convenient that the mortgagor should remain seised of the legal estate with all its legal incidents. Again, in a strict settlement (the object of which was not only to secure the enjoyment of the land to the husband during his life, and after his death to the eldest son for the time being of the marriage, but also to provide pin-money for the wife, a jointure for the widow and portions for the other children of the marriage which should be raised out of the land, but at the same time raised or raiseable in such a way as not actively to hinder the husband or the eldest son in his enjoyment of the land), a term is always created in the land and vested in trustees to secure the wife's pin-money and jointure and the younger children's portions. So long as the husband or his eldest son voluntarily pays the pin-money, jointure or portions the trustees have no occasion to make use of their term and enter on the land; but as soon as default is made they may enter on the land, and out of its rents and profits pay the pin-money, jointure or portions which may be in arrear. In the case of pin-money and of a jointure, which are annual sums, it will be most probable that they can be raised out of the rents and profits of the land as they come in; but in the case of a lump sum like a portion it is evident that it cannot be so discharged, as its gross amount may exceed the annual produce of the land by a very large amount. It is necessary, then, to provide that there shall be some security that the portions shall be paid, and that there shall be some fund to have recourse to in the case of their non-payment. Now the land itself is the only security available. But merely to charge the payment of the portion on the land would not give an efficient remedy. Before 4 Geo. 2, c. 28, s. 5, a simple rent-charge was merely a rent seck, and gave no powers of distress against the land in case the charge was in arrear; and though the power of distress was given by that statute, and more ample and useful powers to the same effect are given by sect. 44 of the Conveyancing Act, 1881, yet among other disadvantages these powers of distress cannot be exercised over lands subject to leases either in existence at the time when the settlement was made, or made afterwards under leasing powers contained in the settlement or provided by statute. For in both these cases the title of the lessee is paramount to the rent-charge. A mere power of distress then would only provide a partial security for the payment of the charge, and if the settled land was all let out on lease would be no security at all. To provide a more reliable security the device of limiting a term of years to trustees to secure the charge was adopted. By this scheme the land before being limited to the trustees of the settlement to the use of the tenant for life was demised to other trustees

for the term of 999 years. By virtue of this limitation the trustees would be entitled to enter into possession of the land, and receive the rents and profits in preference to the tenant for life, and if there were any lessees on the land holding under leases created before the settlement they could force them to pay their rents to them (the trustees), for they were the assignees of the reversion expectant on such terms; and they would have the same power with regard to holders of terms created since the settlement, because they were the reversioners expectant on the determination of such terms: their title was prior to that of the tenant for life.

Now the advantage of the term is obvious, for while it gave the trustees of the term the above powers of distress, it in no way interfered with the legal estate. The legal seisin was unaffected by the existence of the term. The life estate was not expectant on it, for the existence of a prior term of years does not prevent the first vested estate of freehold from being an estate of freehold in possession. (See *Boraston's Case*, Tudor's Conv. Cases.) The life estate of the tenant for life was not a remainder expectant on the term, but his rights to the possession and enjoyment of the land were subject to the rights of the owner of the term, so that he might be deprived of the immediate use and occupation of the lands during the term by the trustees thereof.

Further, the trustees could pass their rights to their assignees; and here it was that the most important function of the term as a security came in, for the trustees by mortgaging the term could raise a lump sum of money, and were in a position to give sufficient security to the person from whom they borrowed it that it should be repaid. If, indeed, the charge was duly paid, there would be no occasion for them to enter under their term, and they could permit the tenant for life to occupy the land and take its profits without interference. But as soon as the payments became in arrear, or were not duly made, they could by virtue of the term oust the tenant for life, and make use of the term to provide the sum required.

Now, suppose a term has been created either for the purpose of being mortgaged or in a settlement to secure pin-money, jointure or portions, and suppose that the mortgage money, or the pin-money, jointure or portions have been paid, and the objects for which the term was created have been answered. What is to become of the term? It still exists, though the reason for which it was created has ceased to be. In many cases there is a proviso in the mortgage or settlement, as the case may be, that on the money being paid or the sum charged raised the term shall *eo instanti* cease—a *proviso for cesser*, as it is called. In this case there is no difficulty, for the term will expire by virtue of the proviso as soon as its objects are effected. But suppose there is no proviso for cesser, how then may the term be got rid of? This was sometimes accomplished by the trustees of the term surrendering it to the owner of the fee simple, in which case the term would merge or be swallowed up in the fee. But the most usual and beneficial course was not to destroy the term at all, but to allow it to continue in existence, because by its existence it would, either by express assignment for the purpose or by the construction of law, become "attendant on the inheritance," and could be made use of to afford it protection.

Now, we have to inquire what was meant by a term becoming attendant on the inheritance, and further, in what way did it protect it.

In the first place we may remark that attendant terms are the mere creation of equity, for at law every term is a term in gross: that is, a term, having once been carved out of the inheritance and made into a separate species of property, continued even after the objects for which it had been created had been satisfied to remain a separate and distinct property, to have an independent existence, and to be endowed with all the incidents of leasehold property. The freehold estate was one thing, and the leasehold estate carved out of it was another, and the latter could only cease to exist by its expiring by natural effluxion of time or by surrender and merger in the freehold.

This vitality of the term was at law only productive of inconvenience, for it introduced complexity into titles, and tended, as it was said, to divert estates from their right channel. We can best explain this by example. Suppose A. were the owner of a freehold estate, and out of the fee he carved for a certain purpose a term of 999 years, and for such purposes vested this term in trustees. Suppose that, after the expiration of a short time, say nine years, the objects for which he had created the term were accomplished. Here A. would be the owner of a fee simple estate and also the beneficial owner of the residue of the term. He would have two distinct kinds of property, a legal freehold interest in the inheritance, and a beneficial or equitable interest in the term.

For it was plain that the legal owner of the term was not intended to derive any benefit from it. The specific trust of the term being declared, by consequence any purpose beyond that was excluded. Now, at law, the property, though the right to it beneficially belonged wholly to A., would be split up, and on the death of A., would run in two channels, and become divided between the real and personal representatives. The fee simple interest would pass to his heir, and the leasehold interest to his personal representatives. The result would be to leave the real representatives little but the mere name of property, for the inheritance would be, as far as regards enjoyment, expectant on the determination of the term, *i.e.*, the heir would, strictly speaking, not be entitled to occupy and enjoy the land till the term had run its full course of 999 years. And an inheritance expectant on a term of years of so great a length is not of much value. The whole substance and value of the estate would devolve on the personal representative, whilst the real representative would be left destitute of everything but the "shadow of an inheritance."

To avoid this, the first course adopted was for A. to have the term surrendered to him, so that it should merge in the inheritance. But, as it was discovered that to keep the term on foot was (as we shall hereafter see) extremely advantageous, it became the practice not to destroy it, but to allow it to continue in existence, and to have it expressly assigned to a trustee for the owner, in order to protect him against charges which might have been created since the coming into being of the term. Now courts of equity here stepped in, and, in order to preserve as near a conformity as possible between the rules of legal and equitable estates, and avoid that perplexity and inconvenience which would necessarily result from the application of two different systems of property to the same subject, would generally regulate the latter by analogy to the established rules and regulations which at law govern and prevail in respect of the former, and consider the term as consolidated with and as part of the inheritance, and as belonging to the heir, being but as shadows kept on foot for a particular purpose. A term, then, so assigned would cease to be of inconvenience, because it was held that it followed all the limitations of the inheritance, belonged to the heir of the owner or his devisee and not to his personal representatives, and was subject to the other incidents of a fee simple estate. (See *Best* v. *Stamford*, 2 Freem. 288; *May* v. *Williams*, 1 P. Wms. 137; *Cooke* v. *Cooke*, 2 Atk. 67.) Thus, it would not formerly pass by a will not executed pursuant to the Statute of Frauds, it followed all the alienations made of the inheritance or of any partial estate or interest carved out of it by deed or will or by act of law, would not be forfeited by the felony of the owner of the inheritance, and if the inheritance escheated it would go with it.

But subsequently equity took another step in advance, and held that an *express* declaration of a trust to attend the inheritance was unnecessary to effect its attendance; for it concluded that where the beneficial ownership of a term and that of the inheritance met in the same person, undivided by any intervening beneficial interest in another person, there an equitable union took place, and the term, which was before personal property, became annexed to the inheritance and attendant upon it as part of the same estate and property, unless the owner expressed an intention to the contrary. For if the keeping of property in the right channel and the preserving of the dominion of it be desirable ends (which seems to be unquestionable, seeing the attention paid to them by courts of equity), it is but reasonable to presume every owner of real property to have them in his intention and wish, unless he declare to the contrary. The utility of these ends remains the same, whether a man expresses his intention to attain them or not, and therefore, for anything that appears to the contrary, the general grounds on which equity considers terms as attendant upon the inheritance subsist in the one case as well as in the other; indeed, so far as the intention or assent of the owner is required to effect or complete such attendancy, it is but equitable to infer it from his silence, for it would be injurious to impute to any man a want of assent or inclination to what generally appears to be convenient and desirable, unless he expresses it himself. All the reasoning in support of the attendancy of terms proceeds on grounds independent of the owner's declaration of such trust, and therefore is applicable in its full force to those cases where no such declaration exists (see 1 Powell on Mortgages, 460); so that if A., seised in fee of land, creates a term for payment of his debts without saying that after his debts are paid the term shall cease or attend the inheritance, the term will nevertheless, after the debts are paid, attend the inheritance. And, as a general rule, it may be laid down that in all cases where the term and the freehold would, if legal

estates, merge by being vested in the same owner, the term will, in equity, be construed as to be attendant on the inheritance, unless there be a declaration or other act to evince an intention to sever them. (*Kelly* v. *Power*, 2 Ball & Bea. 258.)

It may be asked, if equity's intention was to get rid of the inconvenience of the term to the inheritance, why did it not hold that such term was constructively merged in the inheritance, and so get rid of it entirely? No doubt equity would have done so had there not been a good reason for still preserving the term. If the term were to be considered as merged it would be gone altogether; but by treating it as still in existence, it could be seized upon and made use of as a shield to the inheritance against incumbrances, in the manner in which we shall in a moment proceed to point out. Meanwhile it will be noticed that this practice of treating the term as impliedly attendant on the inheritance was practically as nearly as possible the same thing as merger. The term followed all the devolutions of the legal estate, and its theoretical separate existence was not felt, because equity deprived it of all those incidents which would have had any practical effect had it been still allowed to continue in existence as a legal term in gross. As the Lord Keeper said in *Best* v. *Stamford* (*supra*), "It may in some sense be said here *æquitas sequitur legem*, for at law if a term and the inheritance come into one hand, the term is merged and the estate goes to the heir; so in equity it is in the nature of a merger, for the trust of the term will follow the inheritance."

What, then, was the advantage of considering the term as still in existence? The object in so considering it was, that it was then disannexable from its attendance on the legal estate, and might be treated again as having a separate, independent entity, when circumstances made such a treatment desirable. This would be when a *bonâ fide* purchaser obtained a conveyance which was defective by reason of some charge or incumbrance, or some other impediment, whereby he acquired merely an equitable interest as distinguished from a legal estate. Here, if he should obtain an assignment of the term to a trustee for himself, he would be entitled to the possession and ownership of the land during the continuance of the term in preference to any creditor or incumbrancer of whose charge he had not had notice at or before the completion of his contract for purchase, and he might make use of the term either to defend his possession or to recover it at common law when lost, though he had not strictly the legal title to the inheritance. (See *Willoughby* v. *Willoughby*.)

This protection against mesne incumbrancers would extend generally to all estates, charges and incumbrances created intermediately between the creation of the term and the time of purchase, except Crown debts by specialty (see *King* v. *Smith*); but, to obtain the protection, the purchaser must have been a *bonâ fide* one—he must have had no notice of the prior incumbrance, and he must have had the first and last right to call for the assignment of the term. But there was one kind of incumbrance against which he would be protected, even though he had notice or it, *i. e.*, dower; for a term would be a protection against the dower of the vendor's wife, provided the term had been created prior to the attachment on the inheritance of the right of dower, and this, though the purchaser had notice of the dower prior to his purchase. (*Wynne* v. *Williams*, 5 Ves. 134; and *Hill* v. *Adams*, 2 Atk. 208.)

The principle upon which the protection afforded by the assignment of a satisfied term rested may be explained as follows:—A. purchases a fee simple estate from B. He has no notice of any incumbrance, but he finds that a term has been created by some of the deeds disclosed in the abstract, and that the objects for which that term was created have been answered. He then takes an assignment of that term to a trustee for his benefit. Now suppose a third person, C., comes forward and alleges that he has a charge on the land bought, by virtue of some instrument executed by the vendor, B., prior to the sale to A. A. finds that C. has such a charge, but that it was created *since* the creation of the term. He will then be able to say to C., "I am forced to admit the genuineness of your charge, and that legally your claim against the land is entitled to priority to my rights in it; if I had not taken care to protect myself I would have had to submit to your prior claim, but there is an outstanding legal term derived out of the inheritance. This term I have had assigned to a trustee for myself, and I am entitled under it to the beneficial occupation and possession of the land until that term comes to a natural end. Now this term is prior, in point of time, to your charge, so that your rights against the land must be postponed to mine. You have no remedy against the land till my term expires; you must wait till then." C. would then have to wait until the term came to an end before he could enforce his charge, and if the term was, as it

usually was, a very long one, *e. g.* 999 years, his claim would be practically valueless. But suppose he could prove that A. had had notice of his incumbrance before purchasing the land. In this case C.'s rights would have preference to A.'s, notwithstanding that A. had the term assigned to him for protection. For here equity would not afford any relief to A., and would not disannex the term from the inheritance, and allow it to leap into a separate existence again, so as to stand in the way of C.'s claim. The fact that A. had notice of C.'s charge would colour his obtaining an assignment of the term with fraud. He would have no equity on his side, and a Court administering equity would not interfere to protect him; for in such cases the purchaser came in fraudulently, and even though he obtained an assignment of a prior legal term, notice would destroy all the benefit which he might otherwise have derived from it, as it would reduce his equity below that of the person of whose claim he was informed, and would give such person a superior equity, which the possession of the legal estate alone would not counterbalance. The whole ground on which the doctrine of the protection of terms assigned to attend the inheritance rested is the equitable rule, that "where a man is a purchaser without notice he shall not be annoyed in equity, not only where he has a prior legal estate, but where he has a better title or right to call for the legal estate than another" (see *Wilkes* v. *Boddington*, 1 Vern. 104); and whether the party be the purchaser of the legal estate or only of an equitable interest, will not make any difference. (*Vide* Fitz. 213). The result then may be stated in the words of the learned editor of Powell's Treatise on Mortgages. He says (p. 486), "A purchaser or mortgagee obtaining the assignment of an outstanding legal term will, under most circumstances, be secure against all estates, charges and incumbrances (except Crown debts by specialty) created immediately between the time of the granting of the term and the period of the purchase or mortgage. But the purchaser or mortgagee, to avail himself of the benefit of such outstanding term, must have paid or advanced valuable consideration,—his purchase or mortgage must have been fair,—he must have had no notice, either express or implied, and have the first and best right to call for the legal estate of the term. Hence arises the necessity of procuring the assignment of all outstanding terms.

It should be noticed that the mere constructive attendancy of a term upon the inheritance does not afford any protection. To do so it must be expressly assigned for the benefit of the purchaser. For if the term was not so expressly assigned to the purchaser, being attendant on the inheritance, it would still remain annexed to it, and would be attendant for the benefit of the different persons who from time to time became entitled to the inheritance, in order of priority of time; so that a mortgage term left outstanding would be held in trust for a first, though not for a second, purchaser, the title of the former being preferable in point of time to that of the latter. But if the second purchaser, without notice of the first, obtained an assignment of the term, the term would then become disannexed from the inheritance for his benefit, and would operate to protect him from the first purchaser, and he would be entitled to the possession and enjoyment of the land for the period during which the term was still running its course.

A distinction was once attempted to be drawn between a term attendant by express declaration and one attendant by implication. It was said, that where a term was once expressly assigned to attend the inheritance, it could not be got in and made use of as a protection to a purchaser; for it was contended that it could not enure to any other purpose than that prescribed, unless it was severed from the inheritance by the owner of the inheritance himself. But this contention was held not to be tenable in *Willoughby* v. *Willoughby*. There it was first argued that where a term was expressly assigned to attend the inheritance, that was notice to the purchaser that certain incumbrances existed. Lord Hardwicke said, "This is a mistake; for an assignment of a term to attend the inheritance generally is only notice that there is an inheritance to attend, but not that the estate is bound by any other incumbrance. If in such assignment it be declared that the term is assigned to protect the uses of *such* a settlement, or the uses in *such* a deed, it will be notice of that deed or settlement, and of all the uses in them, and the purchaser is bound to find them out at his peril." Secondly, it was contended that such a term is so annexed to the inheritance that it will go along with all the estates which are carved out of it, and so would go to protect the first person into whose hands the inheritance might come. Lord Hardwicke, in reply to this, said, "I agree that this will be so against the grantor and his heirs and all claiming under him, either as volunteers or with notice. But where a new purchaser for valuable considera-

tion, with the qualifications aforesaid" (*i. e.*, a purchaser who was *bonâ fide*, who purchased without notice, and had the best right to call for the assignment), "gets an assignment, he comes in in a different degree, and how can equity take it from him without contradicting all their rules?"

(*To be continued.*)

DAMAGES FOR BREACH OF CONTRACT TO SELL LAND.

As a general rule, when a person makes a contract and then breaks it, he is liable to an action for damages. That is, the other party to the contract can recover from him such a sum as shall be sufficient to compensate him for the loss he has sustained by the failure of the defaulter to carry out the engagement. First of all, he is always liable for nominal damages, although the plaintiff in an action cannot show that he has sustained any actual loss by the breach; and though the nominal damages awarded may only amount to a farthing, a verdict for them may be followed by the necessity of having to pay the plaintiff's costs of action. Besides this he will have to pay the damages actually incurred, *i. e.*, those which arise naturally, and according to the usual course of things from the breach. But beyond this he will in most cases further have to pay consequential damages. Now, consequential damages are recoverable, when further loss has been entailed on the plaintiff than the loss immediately and in the natural course of things ensuing from the breach. Consequential damages are, however, subject to this limitation, that they cannot be recovered unless they may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of it. If the consequential damage occurs as the result of a special combination of circumstances which are not known to the party guilty of the breach, then they are not recoverable. For an instance of the manner in which the Court has applied this rule to contracts to supply goods, &c., the reader is referred to *Hadley* v. *Baxendale* (9 Ex. 341). Our purpose at present is to consider the rule as it bears on the amount of damages recoverable on the breach of a contract to sell land.

When a vendor having contracted to sell land refuses to carry out his contract, the most frequently adopted course of the purchaser is to bring an action for specific performance. And this he will generally do when the title is a good one. But when the failure of the vendor to complete arises from his inability to furnish an unimpeachable title, (which failure of course amounts to a breach of contract,) the purchaser will not care specifically to enforce the contract and get for himself an estate which has a flaw in its title. His appropriate remedy in such a case is to bring an action for damages. Now, to what damages will he be entitled? The question resolves itself into the inquiry, what loss has he sustained in consequence of the non-fulfilment of the contract? He will be, in the first place, entitled to the actual costs and expenses, so far as they are reasonable and proper, which he has incurred in investigating the title, &c.; and could recover any deposit money paid on entering into the contract. Can he recover anything further? The most usual case in which a purchaser alleges any further loss is this. He says:—Shortly after my contract with the vendor, I resold this land at a much higher price to a third person; and I claim as damages for the loss of my bargain the amount which I would have put into my pocket, had I been able to carry my contract out. Now, the question whether a purchaser can recover damages for the loss of a bargain came before the Court in *Flureau* v. *Thornhill* (2 W. Bl. 1078), and it was there laid down that where the vendor has acted in good faith and under circumstances which allow him reasonably to suppose, until strict investigation proves the contrary, that he has a good title, a purchaser from him who fails to get the purchase completed by reason of defects in the title, cannot recover damages for the loss of his bargain. This is, of course, taking it for granted that the vendor did not at the time of entering into the contract know of the subsequent contract for resale at a profit to the third person. The loss of profit to be derived from the subsequent resale is too remote, and cannot be considered to have been in the contemplation of the vendor when he contracted to sell.

It will be noticed that the rule in *Flureau* v. *Thornhill*, was qualified by the words "where the vendor has acted in good faith and supposes that he has a good title." Suppose the vendor has no reason to suppose that he has a good title, and does not believe that he can make one; will this make any difference? The case of *Hopkins* v.

Grazebrook (6 B. & C. 31), would seem to show that it would. For there it was practically held that where the vendor had not the legal estate, and had no reasonable expectation that he could make a good title, the purchaser could recover substantial damages for the loss of his bargain, and this, even though it was admitted that he had acted *bonâ fide*. And in *Robinson* v. *Harman* (1 Ex. 850), it was held that where the vendor knows he has no title, and chooses to contract for the sale of the property, he is not within the rule of *Flureau* v. *Thornhill*. Again, in *Engel* v. *Fitch* (L. R., 4 Q. B. 659), the vendor, who had a good title, had undertaken that possession should be given to the purchaser on completion, and on faith of this the purchaser resold at a profit. It was found that a mortgagor was in possession, but the vendor, though he could have ousted him by ejectment, refused to incur the necessary expense. It was held that the purchaser was entitled to damages for loss of bargain, on the ground that where the breach of contract arose from the neglect of the vendor to do an act within his power, the rule in *Flureau* v. *Thornhill* did not apply. To our mind it has always seemed that these cases proceeded on a wrong principle. The point to be considered in the above cases was the same—Are the damages claimed too remote? We do not see how the conduct of the vendor can affect the question at all. It is not a matter of punishing him for his wrong conduct in holding out as his own that which was not his own. It was the breach of the contract caused by the defective title, not the vendor's conduct, which caused the loss. And in what sense can the want of good faith on part of the vendor be considered to have any bearing on the defect? The defect which has caused the breach is there whether the vendor knew of it or did not know of it. His knowledge of the defect contributes nothing towards the loss of bargain which the purchaser sustains. How can that damage be said in any way to flow from his good faith or otherwise? The theory that he cannot be considered as having contemplated the consequential damage holds equally, whether he did or did not know that his title was defective.

In Sedgwick on Damages (4th ed. p. 234) it is admitted that the distinction attempted to be drawn cannot be justified or explained on principle.

We need not, however, discuss *Hopkins* v. *Grazebrook* at any length, for practically the distinction there established may be taken to have been overruled in the subsequent case of *Bain* v. *Fothergill* (L. R. 7 H. L. 158); and it may now be taken as established that damages cannot be recovered by a purchaser for loss of bargain on account merely of breach of the contract by reason of a defect in title, no matter how mendacious or wanton the conduct of the vendor may have been. As Lord Hatherley said, when a man purchases an estate, the notorious uncertainty of English titles gives him, as it were, constructive notice that there may be defects in title, and he must not count too confidently on getting his purchase; so that when he makes a subsequent resale at a profit, he must not count that profit as actually secured, but must take into consideration the likelihood that his vendor may not be able to make a marketable title to the property.

In conclusion we may remark that the case of *Hyam* v. *Terry* would seem to show, that the rule laid down in *Bain* v. *Fothergill* applies also to contracts to grant a lease, and that an intending lessee cannot recover damages in respect of the loss of a subsequent bargain, in an action for the breach of a contract to grant a lease.

HOMICIDE.

IV.

(*Continued from p.* 191.)

Another aspect of the case of using human agency to effect a killing presents itself in the killing of a person by giving false evidence against him, whereby such person suffers death by the sentence of the law. If A. so accomplishes the death of B. it is evident he acts through the instrumentality of many agents—the jury, the judge, and the persons who carry the last penalty of the law into effect. Morally, he is the originating cause of B.'s death, and the jury, the judge, and the executioner, though they have all a share in bringing about the result, are all minor causes which are set in operation by A.'s false testimony. According to the ancient law, A. was responsible in this case, and could be convicted of murder. (See Mirror, c. 1, s. 9; Bracton, Lib. III. c. 4; 1 Hawk. P. C. c. 3, s. 7.) But later authorities, such as Foster, thought it was a crime which was only cognizable *in foro conscientiæ*, and the Code Commissioners of 1845, and also Mr. Justice Stephen in his "Digest," lay

it down that it is no homicide when death is caused by false testimony given in a Court of Justice. There was also a case on the point, *R.* v. *McDaniell.* Here A. and B. in order to get a reward conspired together to bring a false accusation of highway robbery against C., and C. was in consequence convicted and hanged. A. and B. were then indicted for murder, but unfortunately the case was withdrawn, so that the law on the point received no judicial interpretation. The abandonment took place, it is said, on the ground that the prosecution felt an apprehension lest the fear of capital punishment for murder by a malicious prosecution should deter true witnesses from coming forward to support a prosecution for murder; and, again, it was said that the law had already provided a distinct punishment for perjury. We think, however, that there is much reason to suppose that at the present day A. and B. in such a case might be successfully indicted for murder. There is no reason why they should not be held responsible for a death which they have logically plainly caused. There is no doubt about the connection between cause and the effect; and the fact that by law perjury is one crime and murder another is no reason why, when a man has committed both by one act, he should not suffer the punishment attaching to the graver crime of the two. It is a crime punishable with death both by the Prussian and the Bavarian Codes.

Complicated as the above cases are, they are all cases where the immediate cause of death is certain and clear, and the only difficulties which occur are those which render uncertain the connection between that cause and the person alleged to be responsible for the killing. But it is evident that when death does not arise from a single cause, but there are several concurrent causes, the question will become more complicated still.

Now concurrent causes of death may roughly be divided into two classes, those which exist at the date of the infliction of the injury, and those which follow or intervene between it and the death. Taking the former class first, we may illustrate it as follows:—Suppose A. inflicts an injury on B. which is not sufficient in itself to cause death, but B. at the time is suffering from some disease which would sooner or later have put an end to his life in fact, the state of matters is, that B. is a man doomed to a premature death by reason of the disease he laboured under. The effect of the injury is that B. dies sooner than he otherwise would have done had the disease he was suffering under run its natural course. Has A. killed B. here? The law is clearly settled that this would be so, and that if the result of the injury is that B. dies in the spring, though the disease would not have killed him till the autumn, A. is responsible for his death. And the Criminal Law Commissioners in their proposed Code in 1845 stated the law in one of their articles as follows: "It is homicide, although the effect of the injury is merely to accelerate the death of one labouring under some previous bodily injury, disorder or disease." But we imagine that there will always be difficulties about cases of this nature, for who is to say positively whether the disease will sooner or later kill B.? Medical science cannot always be infallible on this point. And, again, there might be cases where B. laboured under some disease which is one which is not necessarily bound to terminate fatally, and in spite of which he might live to a good old age, and ultimately die of some totally different disorder. He might, for instance, have heart disease. There is no reason why this infirmity should inevitably result in his death. It is most reasonable to suppose that he may die of some other disease. But it is well known that a very slight shock is sufficient to produce most prejudicial effects on persons suffering from a disease of this nature. Suppose A. gave B., one of these unhappy persons, a sudden slap on the back, and the shock which ensues is so great, considering his weak condition, that his death results. Now, what has been the cause of B.'s death here? A. or his malady? The slap on his back would not have caused death had it not been for the heart disease; nor would the death have occurred at the time it did, by reason of the heart disease, unless it had been for the shock caused by the slap on the back. We do not think that A. in this case could be said to be responsible for the death of B., if at least he acted in ignorance of B.'s state of health. But if he was acquainted with this, and fully comprehended the risk involved in treating one so suffering as he did, it would not be safe in all cases to say that he had not killed him. For otherwise this might be made a means of perpetrating a murder without incurring any penal consequences; and we might have a case, for instance, where A., having expectation from B., a person suffering, say, from heart disease, might with murderous intent give him such a violent and sudden fright as to cause a shock to his nervous system sufficient to cause his death. If this never could amount to killing,

A. could not be punished as a murderer, however glaringly malice aforethought was patent in his act; and he might afterwards go about freely boasting of the easy manner in which he got rid of B., and do so without any fear of the penalties of the law. On the whole, then, we think that the measure of A.'s responsibility, in cases like these, depends on his knowledge or otherwise of B.'s physical condition, so that his responsibility will be founded rather on negligence and want of reasonable care than on the nature of the act itself considered as a cause of death.

We will next take the cases where the concurrent causes of death come into operation after the infliction of the injury inflicted. Here, of course, the share which that injury takes in the immediate cause or causes of death must always be kept in view, and the concurrent causes must all more or less arise out of it, or be connected with it, in order that the person who inflicts the injury may be held accountable. The true question to be answered is, Would the other causes of death have happened if the injury had not been inflicted? It follows, as a matter of course, that these questions can only arise when the injury inflicted is one which in itself is insufficient to cause death, and they most commonly come up for consideration when the immediate cause of death is wrong or neglectful medical or surgical treatment of the wound received: treatment which has been rendered necessary, or wrongly thought to have been necessary, in consequence of the wound: or where the person wounded has been exposed to natural influences, such as severe weather, which would not have caused his death unless he had been previously weakend or rendered unable to resist them by the effect of the wound. Where the death is not directly caused by the injury done, but by a disease or disorder ensuing as a consequence thereof, there can be but little doubt as to the responsibility of the person inflicting the injury. There is more difficulty about cases where the death is indirectly caused by the injury, but where it might have been prevented by the application of proper remedies and by skilful treatment. Thus, suppose A. inflicts on B. a slight wound,—say he injures one of B.'s fingers; B. is advised by surgeons to have the finger amputated; he refuses, and dies from lock-jaw, arising as a result of the wound. Here, but for B.'s obstinacy, there is no reason why he should have died, or why the mere hurt to his finger should have had a fatal termination. Can A. then be said to have killed B.? We think that there can be but little doubt but that he has. B. might have died from the wound even if his finger had been amputated; and unless it could be shown that amputation must with absolute certainty have secured him from death, so that B.'s refusal or neglect might be said to be the real cause of the fatal termination of the affair, we think A. is clearly responsible for the consequences. This view is adopted by our law. (See *R.* v. *Holland*, 32 M. & R. 351.) Perhaps, the case might wear a different aspect if B., by actual intemperance or reckless and wilful neglect of himself, aggravated a slight injury into a mortal disease. The question, if morally speaking a homicide could be said to have been here effected, is one of doubt; but the English law seems pretty clear on the point, that even in such a case the party who inflicted the injury would be liable. (See Stephen's Digest, Art. 220.) The Scotch law, we may remark, differs here from the English law, and holds, that if the person receiving an injury, slight in itself, and by no means dangerous, but which by his obstinacy or intemperance degenerates in the end into a mortal sore, he is himself solely answerable for the fatal result. (Alison, 147.)

But suppose a slight injury is aggravated to a mortal one, not by any negligence or otherwise of the deceased, but through the improper surgical or medical treatment of the wound by a third person, much the same difficulty occurs here as in the case of the man with heart disease who dies in consequence of a sudden shock to his nerves. If the wound had not been inflicted, the surgical treatment, which is the immediate cause of death, would not have been applied, and if that treatment had not been applied, it is a matter of uncertainty whether death would have ensued or not. But looking at the subject in a fair and deliberate manner it is clear that the person who inflicted the injury must be responsible for all the reasonable circumstances and consequences which attend it, and that he must be taken to have foreseen that medical treatment was likely to follow the wound he caused, and that there is always a great degree of danger in applying such treatment, and he must be responsible for the ultimate consequences if it results in a failure..

Of course, if the surgical or medical treatment is not applied *bonâ fide*, or if the person who applies it is grossly negligent or unskilful, the question may arise whether or not A. is exculpated.

For if the wound is comparatively slight, and in medical language is a case which could be cured by simple treatment, but the person who treats it acts with so much want of reasonable caution, or with such want of skill, knowledge or ability, or with such want of care taken to ascertain the nature and probable consequences of his treatment, or purposely applies improper treatment, then if death ensues it is only reasonable to suppose that it has been caused by the treatment of the wound and not by the wound itself, so that A. is exempt from liability. But when the immediate cause of death is a modification of the original injury, though different in character—as where by neglect or ill-treatment the original wound turns to a gangrene or a fever—here at law the inflicter of the wound is still responsible for the death, presuming, of course, that the neglect or ill-treatment is not so gross as to fall within the description made use of in the preceding sentence. Thus in *R.* v. *Pym* (1 C. C. C. 339), where A. wounded B. in a duel, and competent surgeons performed an operation which in good faith they considered necessary to save B.'s life, but B. died of the operation, it would seem that A. had killed B. even though it were to appear that the surgeons were mistaken as to the necessity of the operation. But where A. wounds B., and a surgeon, C., applies poison to the wound either *malâ fide* or by gross negligence, and B. dies of the poison, here it is C. and not A. who has killed B. (see 1 Hale, 428). In fact, in all cases where the person applying the medical treatment would himself be criminally responsible for negligence in the treatment used, the person who inflicts the injury will be freed from responsibility if the disease or disorder which occasions death cannot be properly considered to have ensued from the original injury, and to be merely an aggravated consequence of it, but is solely attributable to the criminal negligence. (See the Report of the Criminal Code Commissioners, 1845, p. 23.)

We have now sufficiently discussed what is comprehended by the word "killing" so far as it is effected by the positive acts of a person. But a killing may also follow in consequence not only of an act but also of the omission to do an act. We must now proceed to examine these cases.

STATUTES FOR STUDENTS.

(*Continued from p.* 193.)

The Effect of the Statute.

By sect. 1, the use or equitable estate being turned into the legal estate, the former *cestui que use* became, as it were, by "parliamentary magic," at once the legal owner for the same estate as he had in the use, and as such liable to all the rules of law. Thus, his lands could not be disposed of by will, were liable to escheat and forfeiture, and could be taken under an execution on a judgment. It was thought that the distinction between legal and equitable estates was for ever destroyed, but a means of evading this statute was soon found, for in *Tyrrell's Case*, decided about 1558, it was held that the statute only executed one use, and consequently if lands were conveyed to A. and his heirs, to the use of B. and his heirs, to the use of, or in trust for, C. and his heirs, that B. took the legal estate, and that C. got nothing, as his use was a use upon a use, and not executed by the statute. Here was a grand opportunity for the Court of Chancery to interfere, in exactly the same way as it had originally interfered when uses were invented, by compelling B., the legal owner, to hold the property in trust for C., who was considered the equitable owner; and thus equitable, as distinguished from legal estates, again arose in lands, and the *principal* effect of the Statute of Uses was to add the three words "to the use" to every conveyance: for, as before the statute, if it was desired to make A. the legal and B. the equitable owner of lands, they were conveyed to A. and his heirs, to the use of B. and his heirs; so, after the statute, the same effect was produced by conveying the lands unto X. and his heirs, to the use of A. and his heirs, to the use of, or in trust for, B. and his heirs, the equitable interest of B. being under the statute known by the name of a *trust* instead of a *use*, as before the statute.

While the first part of the first section thus puts the *cestui que use* into actual possession of the land for the same estate as before the statute he had in the use, the second part controls the first part by providing in effect that he shall not have more legal estate than the feoffee to uses formerly had; and, therefore, if lands are conveyed to A. for life, or to A. and his assigns, to the use of B. and his heirs, as before the statute, the legal estate vested in A. would have been a life estate only; words of inheritance being wanting, B. only acquires an estate in fee, determinable on A.'s death.

In connection with sects. 6, 7, 8, 9, it must be remembered that before the Statute of Uses a man could defeat his wife's right to dower out of lands purchased by him by having them conveyed to a feoffee to uses; and as the purchaser did not generally wish to deprive his wife after his death of all interest

in his property, he often directed the feoffee to convey to his wife an estate in the lands purchased in lieu of dower. This was called a *jointure*. The statute having converted them into the legal estate, the widow became entitled to dower out of lands conveyed to uses; and, therefore, to prevent them getting both dower and jointure, and at the same time to enable men to make valid jointures, so as to prevent dower attaching to legal estates, these sections were passed.

Jointure is divided into two kinds—*legal jointure* and *equitable jointure:* the former occurs when a sum of money payable out of the husband's lands, to take effect immediately on his death, is settled *before marriage* on his wife for her life at least, and operates to effectually defeat dower; the latter occurs where the money is so settled *after marriage*, and in this case it does not operate as a complete bar to dower, as the wife, on her husband's death, has the right to elect between it and her dower.

Although the *principal* effect of the first section of the statute, owing to the decision in *Tyrrell's Case*, was to add the words "to the use" to every conveyance, this was by no means its only effect, for by conveying to uses many dispositions can be legally made which at common law would have been wholly void; thus future estates, independently of particular estates to support them, may be created by means of shifting and springing uses; so, too, a man can convey to himself or to his wife by means of uses.

The effect of the Statute of Uses on a bargain and sale was a most important one. Before the statute, if A. bargained and sold his lands, whether by writing or by word of mouth, to B., although no legal estate passed by such bargain and sale to B., on account of there being no livery of seisin, yet B. having paid his purchase-money, was deemed in equity to be the beneficial owner, and A. was compelled to hold the property as trustee for him. A bargain and sale thus operated in equity before the Statute of Uses to pass the use in the lands to the purchaser, and as by the statute the use was turned into the legal estate, the purchaser became, after the statute, at once legally seised of the lands without the evidence of a written contract, or the solemnity or notoriety of livery of seisin. This effect of the statute was never intended, as the law disliked anything in the nature of secret conveyances, and the Statute of Inrolments (27 Hen. 8, c. 16) was at once passed to remedy the evil, by providing that bargains and sales of freehold estates should be by deed and publicly enrolled. This conveyance by bargain and sale (which may still be used) is said to operate under the statute *without transmutation of possession, i. e.*, it operates as a declaration of use by the conveying party, and the possession passes by force of the statute; thus, if lands are bargained and sold to A. and his heirs to the use of B. and his heirs, A. takes the legal fee and B. the equitable fee. There are two other conveyances which operate in the same way, namely, a covenant to stand seised of property, and an appointment under a power. All other conveyances operate *by transmutation of possession, i. e.*, the conveyance itself transmutes the possession of the land to the purchaser, and in order to pass the legal estate the use must be declared; thus, under a grant or feoffment to A. and his heirs, to the use of B. and his heirs, A. takes nothing, and B. has both the legal and equitable estate. Conveyances which transmute the possession are said to operate at common law, while those which operate without transmutation of possession are said to operate under the Statute of Uses.

The Statute of Uses does not affect (1) copyhold estates, and if copyholds are surrendered to uses the trustee is admitted, and the lord looks upon him as his tenant.

(2) Personal property, including leaseholds, for the statute makes use of the word *seised*, a word having no application to personal property, of which a man is said to be *possessed* only and not seised. Great inconvenience has been felt from this, for in the event of its being necessary to transfer this kind of property from one person to himself and another, as, *e.g.*, in the case of a new trustee of property being appointed, two deeds were necessary to effect the object; an inconvenience, however, now obviated by 22 & 23 Vict. c. 35, s. 21, and 44 & 45 Vict. c. 41, s. 50.

LEADING CASES IN RHYME.

By E. B. V. Christian, Esq.

No. I.

Patterson v. Gandasequi.

Should you ask me whence these stories,
Whence these tales of Gandasequi;
I should answer, I should tell you,
From Smith's well-known Leading Cases:
Smith, J. W., the learned,
Volume two: the eighth Edition.

Gandasequi, wealthy merchant,
In Madrid the splendid, dwelling;
Came to England, came to London,
Came and called on Larrazabal,
Menojo and Trotiaga,
London merchants, they, his agents;
Said "I'll give you two per centum
For commission on your purchase,
Purchases for Gandasequi."
Then to Patterson a message
They dispatched, and he upon them
Called, and with him brought his samples;
In the counting-house he showed them,—
Counting-house of Larrazabal.

Gandasequi looked upon them,
And debated of their prices.
Then he ordered many stockings,
Ordered several hundred dozens.
Gladly Patterson despatched them,
Invoiced all to Larrazabal;
Till the news upon the market,
Spread among the frighted merchants—
"Larrazabal and Menojo,
And their partner, Trotiaga,
All are bankrupt, *banco'rupto!*"
Then did Patterson for payment
Gandasequi press, and sue him.
Ellenborough, Lord Chief Justice,
Tried the case in London city.
"No," said he, "for Larrazabal,
To your knowledge, was an agent.
You to him the goods have invoiced—
Knowing well for whom he acted;
You elected Larrazabal
For your debtor;" and so saying,
Gave a verdict for defendant.

No. II.

Addison v. Gandasequi.

In the time when Gandasequi,
Having crossed the stormy water;
Having crossed the Bay of Biscay,
Was in London city dwelling,
Did his agent Larrazabal
Write to Addison, the merchant,
Saying, "Show us of your samples."
To the house of Gandasequi
Straight the merchant brought his samples.
Gandasequi long debated
Of their prices; six per centum
Did he ask for a reduction.
And he ordered; gave directions
For the shipment of his purchase
By the good ship "Archduke Charles."
Addison the goods delivered,
Debited to Larrazabal.
Larrazabal gave him credit
For the goods, and Gandasequi
Did he debit with their prices
And commission two per centum.
Then when Larrazabal's failure
Was the theme of all the market,
Addison sued Gandasequi
For the value of the purchase;
Though he knew that Larrazabal
Was the agent, Gandasequi
Principal and real buyer,
Yet had debited the prices
Unto Larrazabal & Co.
Twelve good men and true, the jury,
Gave a verdict for defendant.
All the learning of the lawyers—
Serjeant Best and Serjeant Vaughan—
Failed to remedy his losses,
Failed to set aside the verdict.
Addison was left lamenting
"Oh, my money! Gandasequi!"

NOTES ON THE FINAL.

In our last Number we gave full particulars respecting the Examinations for next year.

The only alteration which need be noticed is that the Easter Examination takes place earlier, and the Trinity Examination later, than has hitherto been the case. The object of this is no doubt to give more time to those who fail in April to get ready for June.

The days fixed for the November Examinations are Tuesday and Wednesday, the 3rd and 4th November; and the last day for giving notice is 21st September, and for renewed notice 19th October.

NOTES ON THE INTERMEDIATE.

As we duly notified in our August Number, Stephen, 9th edit., is continued as the subject for the Examination of next year.

We are very much in favour of the Commentaries as the subject for the Examination. Indeed, in our opinion, no better work can be selected. At the same time we feel sure that it will not be retained for 1887, unless the publishers of Stephen take care to issue a new edition before next July, for the 9th edition is very far behind the time. The law of bankruptcy which is given in Vol. II. is the old law, and not the law as regulated by the Act of 1883. The proceedings in an action given in Vol. III. are treated of as if the Rules of 1875 were still in force, &c. &c.

Now it is obviously most important that students should not be learning old law, and thinking all the time that it is the present law of the land. Fortunately there is a Guide to Stephen, which we believe is used by most students, which gives the present law, and is quite up to date; and this fact may, perhaps, account for the Examiners having selected for the year 1885 the 9th edit. of Stephen.

The next Intermediate is fixed for Thursday, November 5th; and the last day for giving notice is October 5th, and for renewed notice, October 21st.

We continue below the "Mems. on Stephen."

"MEMS. ON STEPHEN."

(*Continued.*)

How Title by Escheat may be barred.

(1) By the lord neglecting to enter on the lands and tenements escheated. (2) By the lord doing any act amounting to an implied waiver of his right, *e.g.*, by his accepting rent of a stranger who usurps the possession.

Escheats now infrequent.

Because escheats *propter delictum tenentis* were abolished by the Felony Act, 1870 (33 & 34 Vict. c. 23), and escheats *propter defectum sanguinis* rendered less likely to occur by reason of the provision of sect. 19 of 22 & 23 Vict. c. 35, that when there shall be a total failure of the heirs of the purchaser, descent shall be traced from the person last entitled.

Difference between Bastard eigne and Mulier puisne.

Bastard eigne is the illegitimate child of parents who afterwards intermarry. Mulier puisne is the subsequent and legitimate child of the same parents.

How Mulier puisne and his Issue may be barred from the Inheritance.

By allowing the bastard eigne to enter on the lands on the death of father, and enjoy them till his death. If the bastard eigne dies seised of the lands, the inheritance will descend to his issue, and the mulier puisne and all other heirs (even though under incapacity) will be totally barred.

Trustee dying Intestate and without Heirs.

No escheat takes place in such event. The Trustee Act, 1850 (13 & 14 Vict. c. 60), provides that the Court shall have power to make an order vesting the lands in such person and in such manner as the Court shall direct.

Cestui que Trust dying Intestate and without Heirs.

Formerly, no escheat took place, but the trustee held the lands discharged of the trust. Now, by the Intestates Act, 1884, the property will escheat; the Act providing that where a person dies without an heir and intestate as to real estate, consisting of an equitable estate or interest in any corporeal hereditament, whether devised or not to trustees by the will of such person, the law of escheat shall apply as if such estate or interest were a legal estate in corporeal hereditaments.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements expressed or made.*]

Answers to Correspondents.

IDWAL VOEL.—Probably not, but it would be a question for jury.

G. L. HASLEHURST.—It should be Rule 6; thanks.

H. R. F.—(1) If more than one year elapses an order must be obtained. (2) You are not entitled to the description of "solicitor" till admitted.

AGNOSTIC.—Very sorry, your query is too long to set out; and, involving complicated legal points and facts, is more properly matter for counsel.

D. FENWICK.—(1) It is a charge on the land, see sect. 52 of the Act; does your case fall within the terms of the section? (2) The purchaser should ask for the receipt. (3) See *Warner* v. *Steel* (50 L. J., Ch. 542), an analogous case under the old Act.

FRANK TAYLOR.—It should do.

R. W. BAINBRIDGE.—Can find no authority: he has to satisfy himself as to correctness of payments, and probably has discretion as to mode.

G. E. F.—(1) You would not harm if you had been reading Stephen, and what you suggest did happen—the subjects are the same only differently treated, and there would be plenty of time to master the new book. (2) Cannot say.

F. M. BULL.—If properly mastered they should be enough.

INQUIRER.—Of course, if of full age she could give valid receipt, but under circumstances you state cannot say; know no authority. There is an error in the paragraph, see table of "Corrigenda."

W. V. MULCASTER.—This is too long to explain; you will find the point discussed in Gibson and McLean's Student's Conveyancing, p. 226. Yes, the pleadings have to be filed and judgment moved for.

C. HAYFIELD.—(1) Yes; see 23 & 24 Vict. c. 127, s. 4. (2) See Gibson's Guide to Stephen, 5th edit. p. 413. (3) Probably Stephen. (4) Gibson's Guide to Stephen.

JUSTINIAN.—It is difficult to say without a fuller knowledge of all the facts, but the Court always requires in transactions between solicitor and client the most perfect *bona fides;* if this does not exist application should be made to the Court to rescind the contract.

GROTIUS.—Do not know a case in point. Will be entirely a question of evidence whether engagement weekly or monthly. Did the agreement refer to the determining the arrangement at the will of either party?

A SUBSCRIBER.—April Intermediate, 1887; June Final, 1889.

A. D. ROWLAND.—So sorry, cannot find your query anywhere.

CARR B.—In new edition, just published, it is recommended. It will do in lieu of similar works.

A. J. F.—The one you have is out of date. There is no other. Make your own.

E. R. E.—We do not know.

Correspondence.

To the Editor of the "Law Notes."

THE HONORS EXAMINATION.

SIR,—In reply to "Rectus in Curiâ" with regard to the above subject, I certainly agree with him that the hood, or some other similar distinguishing mark of

honour (which he suggests), in addition to the gown already worn, would have a beneficial effect, and in addition would make the "Honors Examination" more popular, and the student's success a reward greatly to be appreciated.

I further think that the man who obtains honors is worthy of some distinction from the man who merely obtains a pass.

Just as the barrister is distinguished from the solicitor in that he wears a wig denoting his being more learned in the law than a solicitor, upon the same basis I argue that a man who obtains honors might reasonably be distinguished from a man who obtains a mere pass in the manner which "Rectus in Curiâ" suggests. E. H. C. I.

To the Editor of the "Law Notes."

Sir, — I cannot agree with your correspondent, "Rectus in Curiâ," that Honor men should "wear a hood or other similar distinguishing mark" with their gowns, for I think it would be considered by other members of the profession, both those at the bar and in our own branch, as what is vulgarly termed "swagger"; and I do not see how it could do good, either to the men who wore them or the Examination, by making either more popular.

There is, however, no doubt but that there should be something more tangible, useful or ornamental given to the men who are placed in the Honors list than the present meagre certificate, and the only use that the case (for the certificate, as far as I can see, is none) can be is as a pencil holder, which purpose it answers admirably.

The only two ways that strike me by which Honors would be more sought after are:—(1) That the Law Society should give each man who is placed in the list a book, varying in value according to the class which he takes. The 1st Class is already provided for, but as to the 2nd and 3rd, why should not each in the former receive a book, value (say) 2*l.* 2*s.*, and in the latter 1*l.* 1*s.* Surely the Society could afford this, considering the amount they annually take in fees; and (2) if the Society do not see their way to give books, why should not each Honor man be admitted as a life member of the Law Society without any fees or subscriptions. This latter would give men an object to work for, and, I think, would bring the Examination into more favour, and would bring the Society more into the general notice of the profession without diminishing the funds, of which the council seem desperately frightened. The present system seems to me a farce, especially as laymen, and also many (and indeed most) in the profession, have no idea what the nature of the Examinations at the present day is. E. G. C.

REVIEWS.

NEW WORKS.

An Introduction to the Principles of Equity. By J. A. Shearwood, Esq., assisted by C. S. Moore, Esq., Barristers-at-Law.—During the last year there have been published on the subject with which the little book before us deals, the 7th edition of Snell's Equity; the 2nd edition of Aids to Equity; the English edition of Story's Equity; Underhill's Modern Equity, and Blyth's Analysis of Snell's Equity. In addition, there are comparatively recent editions of Smith's Manual of Equity, and H. A. Smith's Principles of Equity; so that the ground over which Mr. Shearwood essays to take the student is a well-beaten path. We are, however, far from saying that a further work on Equity would not be acceptable to the student, provided it was written very simply, so as to make the difficult subject more easy to the student of the present day, who has so much work to get up that he is obliged to look for books which make each subject as easy for him as possible. We hoped to find that the authors of the so-called "Introduction to Equity" had written some such a work; but on reading the book we find what to our mind is anything but an "Introduction:" it is rather a condensation in highly technical language of what appears in Snell's Equity; and, as such, can only be of use to the student after he has mastered his "Snell," to enable him to refresh his memory. We confess to having felt much disappointment in failing to find anything novel in the book before us on the subject with which it deals; and, in its present form, we cannot see that the book will serve any useful purpose. It is published by Messrs. Stevens & Sons, 119, Chancery Lane.

Rules for the Interpretation of Deeds. By H. W. Elphinstone, R. F. Norton and J. W. Clark, Esqs., Barristers-at-Law.—We cannot do better than quote the opening remarks in the Preface. "The object of the book," say the authors, "is to present in a moderate compass the rules for the interpretation of deeds." The object is praiseworthy and difficult. To our knowledge there exist no similar works to which the authors could turn for the slightest assistance: the law on the subject must be scattered about in hundreds of works treating of particular subjects. We can well believe that the task of extracting the rules from such diverse sources has been the labour of many years. Does the result repay the labour? Most certainly, in our opinion, it does. The work is not, we should say, a work to be read; who could remember the 197 rules that the authors have deduced, with the exceptions and sub-divisions to each rule? but for reference purposes we can imagine no work likely to prove more useful to the practitioner. How frequently is a lawyer called on to

give an opinion as to the meaning of some particular word in a deed? hitherto he knew that to ascertain the construction which the Courts attached to it meant a laborious search through his digests and reports. Here, then, is a book which supplies the want; we believe the work has only to be known to at once take a permanent place in the affections of the country lawyers, who are more frequently called on to give advice as to the interpretation of deeds, without obtaining counsel's assistance, than London lawyers. One objection we have to the book—but that is matter for the bar, not for us—counsel's opinion will not be so frequently requisite: for here is advice on the very subjects for which, to save the time and labour involved in case hunting, lawyers found it necessary to have recourse to the bar. One serious fault, which, although the authors endeavour to extenuate in the Preface, cannot by any critic be passed without comment: 11 pages of "Addenda and Corrigenda" is unpardonable; the MS. the author admits was written five years ago: it should have been worked up before going to press. To be reliable now, and for reference use, a purchaser must expend much labour in incorporating the "Addenda and Corrigenda." We question the advantage of some 80 pages of Glossary, in which, by the way, we find "advowson" and "hereditament." Imagine a lawyer requiring a glossary to understand these words! With these exceptions, we have nothing but praise for the book: it is excellent. With it on our shelf we feel ourselves fully prepared for difficulties in interpretation. It is published by Messrs. Maxwell & Son, Bell Yard, Temple Bar.

NEW EDITIONS.

The Duty and Liability of Employers. Third Edition. By W. H. Roberts and G. Wallace, M.A., Esqs., Barristers-at-Law.—The new edition of this work is rather a new book entirely than the simple reproduction of an edition: here we have a book of some five hundred pages, the scope and intent of which is "an examination of the whole subject of the duty and responsibility, as far as civil consequences are concerned, of any person who employs others to do work for him." We think the authors have done well to enlarge their scope, instead of, as hitherto, confining themselves to the Employers' Liability Act. The subject is excellently well divided up, and particularly useful—we speak now from practical experience, having had occasion to refer to it—will the chapter prove which deals with the effect of death upon the respective rights of action. With regard to recent cases—a most important point in a work of this nature—we have tested it very carefully, and find it well "cased" up, with but very few omissions, and those not vitally important. The index is good; the table of cases referenced to all reports; and in the list of statutes we notice that the learned authors have not forgotten such out-of-the-way statutes as the Threshing Machines Act, Fruit Pickers Act, Alkali Act, Petroleum Act, Mines Act, Children's Dangerous Performances Act: all statutes bearing on the subject, well within the extended scope of the work, and most useful to practitioners, who may at any time be called on to give advice on a point involving a knowledge of one or more of these acts, and which left to themselves they might well be forgiven for overlooking. We can with very great confidence recommend the book to all in want of a comprehensive work on the subject of "respondeat superior." It is published by Messrs. Reeves & Turner, 100, Chancery Lane.

Modern Law of Real Property. By Louis Arthur Goodeve, Esq., Barrister-at-Law. 2nd Edition.—We had the pleasure of reviewing the first edition of this work in our August Number for 1883 (Vol. II. p. 255). In concluding that review we foreshadowed that the work would secure a place among, but would not supersede, the existing treatises on real property. The fact that a second edition is necessary shows that it has succeeded in establishing its place. The present edition is in all respects equal to the first; but we cannot help thinking that the present custom of reprinting statutes at the end of works is in this book carried to an excess: from about page 400 to 590 is taken up with practically—for the notes to the sections are so few and meagre—a reprint of the different recent real property statutes. It is published by Messrs. Maxwell & Son, Bell Yard, Temple Bar.

We have also received for review:

Railway Passengers and Railway Companies. By Louis Arthur Goodeve, Esq., Barrister-at-Law. Second Edition. Published by Maxwell & Son, Bell Yard, Temple Bar.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. October, 1885. Part 10.

SOME NOTES.

AMONGST our statutes will be found an epitome of, nay, more, a disquisition on, the Thames Preservation Act. The article has been most kindly sent us by a special correspondent, one who tells us that his experience of the river extends, in time, over seventeen years; in distance, from Cricklade to Teddington; in familiarity, from the deepest deeps to the shallowest shallows. His criticisms of the Act, it will be noticed, are most unfavourable. We publish them as his, not ours. We, as Editors, know nothing of river delights or troubles.

A perusal of the epitome of the Criminal Law Amendment Act, 1885, gives food for much anxious thought. If wisely, temperately and judiciously enforced, the statute will undoubtedly slowly tend to the general improvement of public morals; if harshly, vexatiously and stringently enforced, it may tend to even greater evils than those at present existing. The admission of evidence of a child not on oath is a new departure; the liability of a lessee or landlord for the improper user of his premises after notice suggests many curious points; the Act does not say what notice, and does the section mean that the knowledge of the agent is the knowledge of the landlord, or is the agent intended to be personally liable? Careful readers will note many other debateable points.

In the Lord Mayor's Court the other day Sir Thomas Charley appears to have got himself involved in a point of deep complexity. A post-dated cheque was offered in evidence, and objected to on the ground that it had ceased to be a cheque and had become a bill of exchange or promissory note, and that the stamp it bore, although adequate in value to cover the amount for which the instrument was drawn, was not of the proper description. Abstruse and cogent arguments failed in assisting his Lordship to make up his mind. Finally, the cheque was admitted and leave given to move on *the* point raised. We sincerely hope the Court was *moved* to look for the point in the Bills of Exchange Act. A cheque is there defined as "a bill of exchange drawn on bankers payable *on demand*." A post-dated cheque is certainly *not* payable on demand; ergo, we should say it is not a cheque. Sir Thomas is too conscientious in looking up points; possibly this accounts for the number of *remanets* by agreement between the parties when they fear their cases will come on for hearing before him.

To sell "Lumps of Luck"—packets of sweeties, some containing farthings, halfpennies or pennies—at a halfpenny per packet, is to infringe the Lottery Act. The authorities have evidently come to the determination that, as they are nearly powerless to stop gambling amongst adults, they will strike to the root of the evil and protect the rising generation from acquiring a taste for fickle Dame Fortune. That is the right course. Educate children in the way they should go, and you may be quite sure they will not go that way at all. We should like to live to see the effect of this action on the future generation. Will it as a consequence possess no "plungers"?

That boy the other day who, in the Lord Mayor's Court, when asked how he spelt his name, "Knox," said he did not know, but he thought it begun with "K," must have been reading "Pickwick." There is a wonderful similarity between this incident and Sam Weller's celebrated advice to spell it with a "V." And there are still some people who think that every incident in Dickens' works is over-exaggerated.

The Married Women's Property Act provides that married women who possess separate property shall, as some return for the privileges conceded to them, be liable to the parish for the maintenance of their pauper husbands. Somewhere in the country the authorities have compelled a married woman who was trading on her own account to contribute 2*s.* 6*d.* a week to the maintenance of her pauper husband. The "Globe's" remarks on the case are amusing. "If the law be so—a case has been stated for appeal—it will be the opinion of most people the law requires alteration." But the law is so—see the 20th section—and the law has only recently been altered. "The Legislature never intended to discourage wives cursed with worthless husbands from earning their own living." Probably not, but it did intend that a woman should have not only the rights but the liabilities of property, and that the phrase "for better, for *worser*," &c., in the marriage contract should in future apply to both parties.

The "Fortnightly Review" has a story of the late Lord Houghton, sent to its editor by a contributor, which we take the liberty to reproduce.

"Houghton, with all his high gifts, had, like most really noble men, a good deal of the woman in his nature, not only of the gentle, the merciful woman, but also of the woman excelling man by her ready initiative, by her swift sagacity transcendent of the reasoning process, and now and then by her nimble, her clever resort to a charming little bit of stage artifice.

My laundress had come to me one day in floods of tears because her little boy of 11 years old, but looking, she said, much younger (being small of stature), had wandered off with another little boy of about the same age to a common near London, where they found an old mare grazing. The urchins put a handkerchief in the mouth of the mare to serve for a bridle, got both of them on her back, and triumphantly rode her off, but were committed to Newgate for horse-stealing! My laundress (not wanting in means) took measures for having her child duly defended by counsel, but I thought it cruel that the fate of the poor little boy should be resting on the chances of a solemn trial, and I mentioned the matter to Milnes [Lord Houghton]. He instantly gave the right counsel. 'Tell your laundress to take care that at the trial both the little boys—both, mind—shall appear in nice clean pinafores.' The effect, as my laundress described it to me, was like magic. The two little boys in their nice 'pinafores' appeared in the dock and smilingly gazed round the Court. 'What is the meaning of this?' said the judge, who had read the depositions and now saw the 'pinafores.' 'A case of horse-stealing, my lord.' 'Stuff and nonsense!' said the judge with indignation. 'Horse-stealing, indeed! The boys stole a ride.' Then the 'pinafores' so sagaciously suggested by Milnes had almost an ovation in Court, and all who had to do with the prosecution were made to suffer by the judge's indignant comment."

Mr. Besley, sitting the other day as deputy judge in the City of London Court, had a nice point to decide. The legality of a clause in a bill of sale, that if the grantee had to pay rates, taxes and insurance, 20 per cent. additional should be payable, was questioned. The decision was, that such a clause invalidated the bill, as it was not necessary, for the act in such a case would give the grantee power to seize. We fancy the High Court judges, for whom a case was stated, will endorse this decision.

The law of outlawry has just been put in force in Glasgow. A man charged with embezzlement failed to appear, and the judge outlawed him: this serves to remind us that outlawry is still in force in criminal cases.

A Correspondent sends us another advertisement. We have not inserted the advertiser's name, as that would be giving him gratuitous advertisement. We shall be happy to forward it to any Law Society. We may mention that the advertisement was taken out of an Isle of Man newspaper. We are tired of commenting on these continual breaches of professional etiquette. We simply propose in future to insert all that Correspondents may chose to send us, and in that manner obtain a collection, and then draw attention to the matter.

LEGAL ASSISTANCE.—In the Chancery, Common Law, Bankruptcy, Probate and Divorce Courts, Actions brought or defended by skilful Solicitors, and assistance rendered in the contesting of bonâ fide claims. Damages recovered for Breach of Contracts, Railway Accidents, and Illegal Distresses. Divorces obtained. Compositions with Creditors. Suspected persons Watched. Secrecy guaranteed. Advice Free. Consultation by letter.

A refusal on the part of seamen to attend prayers is not a wilful disobedience of lawful orders, and does not justify a yacht-owner in dismissing them without notice and without wages. So the magistrates at Falmouth decided some few weeks ago, and the noble yacht-owner had consequently to pay each man a week's wages. The orders must be such as have to do with the discipline of the ship. This is a most important decision for "yottists" and should be carefully noted by them.

What a mass of information the public get hold of through the medium of the Law Courts. In the prosecution of an Italian for theft it comes out that a *confrère* saved 127*l.* in one summer. Happy thought! We will buy an organ next summer, travel about the country during our holiday, and instead of spending money, make it. Then, again, in another case, it comes out that that charming actress, Miss Violet Cameron, gets 40*l.* a-week.

The Butchers' Company evidently does not consider itself doomed. It has just built itself new premises. The master's speech was interesting in that it referred to the statute of 37 Edw. III., which provided that a sucking pig was to be sold for 8*d.*, a capon for 6*d.*, a shoulder of mutton for 2½*d.*, and a loin of beef for 5*d.* Happy days! We suppose the only object for which this company exists is to prevent meat ever touching such a low figure again; they cannot expect the good wishes of the public.

Policemen are a deal too ready to assume that everyone who falls down or comes to grief in the streets is drunk; and divisional surgeons generally back them up. The case of the cabman who was injured in a collision, treated as drunk, and, as a consequence, died, will, with the jury's rider to their verdict, make all parties a little more careful in the future. Of course in 99 cases in 100 the police are right, and the person is drunk; but we have a right to expect that the divisional surgeon shall not accept the policeman's statement without any inquiry, and also that he possesses skill enough to distinguish the 100th case. Better far that 99 drunken men were treated as invalids than that one invalid should be treated as drunk, and as a consequence die.

The French Courts have decided that a man is perfectly justified in hissing a play if he does not like it. We suppose the law is the same in England. We have often marvelled, however, to see persons, obviously "dead-heads," expressing at a theatre disapproval. How can a man, who gets a seat for nothing, be wicked enough to disapprove?

It seems curious that a witness who objects to take the oath can make a declaration, but that a juryman must take the oath or nothing. But so it is. After all it is probably right: the evidence of the witness is not bound to be accepted without question, whereas one juryman might upset the whole verdict. On the other hand, the man on whose evidence probably the case turns need not swear; but the man who tries it must, and happily in the majority of cases generally does, both legally and illegally, when called to serve on a jury.

Imagine an English princess bringing an action against some county for payment of a marriage gift of 15,000*l.* on her marriage, to be raised by direct taxation on all the ratepayers of the county! Such a lawsuit has just terminated in Germany, the princess alleging that it was payable by virtue of an old custom. The Court has, however, decided against her. We fancy such a claim in England would try the loyalty of the ratepayers liable. Our system is better, making a grant out of the imperial revenues. Of course the ratepayers still pay it; but so infinitesimally that no one objects!

The County Courts Return is always interesting. From that for 1884, which we reproduce below, it will be noticed what a large number of cases must be improperly brought, nearly twice as many judgments for defendants as plaintiffs. The amount involved, getting on for 3,000,000*l.*, means an immense amount of work, when it is remembered that 940,000 of the total number of plaints were for sums under 20*l.* "The number of plaints representing sums not exceeding 20*l.* was 940,683 in the provinces, and 25,294 in the City of London Court; above 20*l.* and not exceeding 50*l.*, 12,066 in the provinces, and 304 in the City of London Court; above 50*l.*, 665 in the provinces, and 129 in the City of London Court. Of the total number, 5,164 cases were nonsuited in the provinces, and 158 in the City of London Court; and judgments were entered for the defendants in 9,617 cases in the provinces, and 330 in the City of London Court. The total amount for which plaints were entered was 2,936,820*l.* in the provinces, and 143,411*l.* in the City of London Court. The total amount of fees received on all proceedings was, under Schedule A, 388,338*l.* in the provinces and 12,572*l.* in the City of London Court, and under Schedule B, 18,452*l.* and 1,077*l.* respectively. The total amount received to the credit of suitors was 1,499,873*l.* in the provinces, and 49,332*l.* in the City of London Court; and the amount paid out to suitors 1,501,239*l.* and 44,443*l.* respectively. The number of bankruptcy notices issued was 1,352 in the provinces and none in London; the number of declarations of inability by debtors was 195 in the provinces and 76 in London; the number of petitions for receiving orders filed was by debtors 2,026 and by creditors 896—all in the provinces."

One correspondent writes us complaining that our "Leading Cases done into Rhyme" were not done into rhyme at all. We admit we were guilty of an "Irishism." We unfortunately selected for first publication two cases done into blank verse, and, without noticing the alteration in the selection, allowed the title to stand. Moreover, we, of course, did not choose the title: our contributor is responsible for that; and it is only fair to admit, that had we taken the cases in the order in which he placed them, the absurdity would not have arisen. We have had these cases waiting space in our columns for a considerable time now. Another correspondent writes us that he considers them perfectly useless for all practical purposes; probably, but we did not intend them to be practically useful. We do not believe in cramming leading cases in this way. We inserted them on the ground of merit. Out of a large selection we have had submitted to us by different contributors, these appeared to us pre-eminently the best.

The case of *Romano* v. *Hodges* (the plaintiff by the way is our old friend the provider of merry little dinners and suppers), given in another column, is a most regretable decision. It seems from this case that a lessee has a perfect right to plaster the outside of his house with posters. Of course future leases must contain a clause depriving the lessee of this power, but owners of existing leases have a fearful and awful retaliation on landlords with whom they disagree about rent: let them post the whole house, and then hand it over to the landlord, posters and all, at the end of the term, and take the chance of an action for dilapidations.

So, according to the case the other day at the Hammersmith Police Court, by American law, if a gentleman insults a lady it is perfectly legal for her to "give him one in the eye." Mr. Paget was compelled to explain to the fair American accused with this offence, that the English law does not allow a lady to slap a gentleman's face; probably not, still if they mean to do it, we fancy they will not be deterred by this declaration as to the English law.

At last a decision not in favour of judgment debtors. The Court of Appeal has actually decided, in the case

of *Ex parte Koster, Re Park*, that if a judgment debtor is proved to have been in receipt of a voluntary gift, he can be committed under the Debtors Act, in that he has been possessed of "means," and has not paid the debt. Formerly debtors had an idea that "gifts" were "means" for drinks, &c.; but not for paying judgment debts. They will do well to remember this decision in future.

An accident, we always thought, was an unforeseen event which no amount of care could obviate, or something like this. Was that District Railway accident quite an accident? The regulations of the Board of Trade require, it appears, that any signal worked by a wire or rod shall be so weighted as to fly to or remain at danger on the fracture of the wire or rod. This, it seems, the signal at Earl's Court Road was not made to do. Now we want to know why an accident which occurs in consequence of a direct breach of the law is, after solemn inquiry, termed an accident. We suppose, simply on account of the inconvenience of having to make directors of a company liable for wilful negligence.

That election of the mayor the other day at Christchurch must have been rather interesting. The name of each voter and of the candidate he supported were proclaimed through the window of an old house owned by the corporation. This would be a long operation in a corporation having many voters. Not much idea of ballot secrecy about this method of voting. Just as well we should say that it was the last election under the old system.

Surely the great Augustus Harris has not gone wrong in his law in his new piece at Drury Lane. We thought ourselves that the divorce was obtained somewhat quickly; but then we came away quite satisfied that it must be all right, for does not the great Augustus produce realistic dramas faithfully portraying "Human Nature"? Someone has evidently had the audacity to question the accuracy of the law, to answer which the solicitors who advised the great one consider it necessary to say that they were previously consulted; that they advised the procedure was perfectly correct, and that they are willing to undertake all responsibility for their advice. Such is the effect of realistic drama: these sober-minded lawyers evidently imagine that Mr. and Mrs. Temple are going to proceed against them for negligence. The joint author is so punctilious in detail in his dramas that he even takes legal advice as to his dramatic law. Why does he not go a step further and arrange to work the Divorce Court at Drury Lane every evening, with real judges, lawyers, divorces, evidence and all.

We like the Greenwich pensioners, and have often thought seriously of applying for leave to have a coat made like unto the gorgeous frock coat in which they are arrayed. We are pleased to see the "old boys" will be allowed to vote.

Who are the Knights of Windsor, and what do the Knights of Windsor do, and where are the Ladies of Windsor, and why should not a Knight of Windsor have a vote just as well as any other Knight? We certainly think such a title should carry with it without question a right to a vote. But the revising barrister would not allow it.

This question of "political lying" shows what loose ideas many people are possessed of, not only on morals but also on law. Why surely, if a landlord writes to a tenant and asks for his vote, he must be guilty of an "undue influence" within the Corrupt Practices Prevention Act, 1883. Tenants so "cornered" by their landlords have only to promise their votes, and, in consequence of such promise wrung from them by the fear of being turned out of house and home, to vote for their *landlords*. If the landlords get in, then let them inform the election agents of the defeated candidates, and if those election agents are worth anything we fancy there will soon be fresh elections in all those constituencies; and we also fancy landlords once found guilty of an "undue influence" will not again write to their tenants asking for votes.

Some revising barristers have without hesitation, allowed the much-disputed military vote, that is, allowing soldiers and officers to vote; others have reserved their decisions. Now, supposing that the election judges determine that officers and soldiers are not entitled to a vote in respect of their barrack occupation, or their own lodgings, what effect will the decision of the higher Court have on the claims already allowed? We must confess we don't know. Probably the revising barristers will have to sit again. But why was not this point settled privately between them, and an unanimous decision arrived at.

Political speeches are very well, and no one expects them to be particularly accurate; but Sir Sydney Waterlow the other day in the country made a statement which *he should* know, if he does not, is grossly inaccurate. He told his audience that to convey a piece of land value 100*l.* would entail legal expenses of 20*l.* Misrepresentation like this is too bad. Let Sir Sydney go to his shop in Birchin Lane, look at one of the many books he publishes on the Solicitors' Remuneration Act, and then make a frank and ample apology to all lawyers, on whom his business practically depends, and promise in future not to do it again.

VACATION AND OTHER CASES.

[The references at the head of each case under T., W. N., S. J., L. J., and L. T. refer respectively to the Times Law Reports, Vol. I., the Weekly Notes for 1885, the Solicitors' Journal, Vol. XXIX., the Law Journal, Vol. XX., and the Law Times, Vol. LXXIX., where further details of the case may be found.]

I.—GENERAL CASES.

[The references under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., Tudor, and Student's Conveyancing, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, Tudor's Conveyancing Cases, and Gibson & McLean's Student's Conveyancing, and indicate the page at which a note of the decision should be entered.]

If a testator by his will forgives his tenant "all rent or arrears of rent due and owing at his death," does it operate as a release of the current half-year's rent up to the day of the death?

Parish v. Hudson.

(S. J. 709.)

In other words, does sect. 2 of the Apportionment Act, 1870, which makes rent accrue due *de die in diem*, apply to such a case? The Court of Appeal, Fry, L. J., dissenting, held that the Act of 1870 did not apply, and the tenant was not released in any way from the current half-year's rent, which he must pay in full on the next day of payment. Lord Esher, M. R., said he was satisfied that neither the person who drew the will nor the testator knew anything of the Apportionment Act, and the testator merely meant to forgive the rent which, in the ordinary sense, was owing to him at his death, that is, rent of which he himself could have insisted on payment. With this view, Bowen, L. J., concurred. Fry, L. J., however, considered that the meaning of the words must be determined according to the law existing when the will was made; and as the will was dated in 1880, and the Apportionment Act was passed in 1870, the words "all rent or arrears of rent" included that which had become due by virtue of the Act. Whether the testator knew of the Act was entirely irrelevant. The words "due and owing" must be taken to have been used in their legal meaning.

The majority of the Court of Appeal thus answered the question set out by us in the negative.

(Student's Conveyancing, p. 447.)

If a tenant, who has taken premises for the avowed purposes of a draughtsman's business, has covenanted "not to permit or suffer to be carried on any trade or other business of a noisy, noisome or offensive character without licence in writing, nor suffer any public auction," will the Court restrain him from covering the front wall of the premises with advertisements?

Romano v. Hodges.

(S. J. 707.)

Smith, J., acting as vacation judge, decided that no injunction could be granted: the defendant had not covenanted not to paste posters outside. The premises in question were situate in the Strand.

Can a solicitor send in a bill of costs with the condition that if not paid within a certain time he will withdraw it and send in another bill?

Thompson, In re.

(S. J. 694.)

In the above case a firm of solicitors, being pressed to send in their bill of costs for certain work done for a person deceased and for his executors, delivered their bill with a letter, stating that "In accordance with the most urgent request of, and to accommodate, the executors of the late defendant in passing their legacy duty accounts, we have, at no small inconvenience, hastened these bills of costs to a conclusion, and now beg to enclose same to you herewith. We beg also to intimate that the costs of, and incident to, one of the bundles of papers could not, in the short time which has been allowed us, be included in these bills. We are, however, willing to accept payment of the balance of these bills—viz., 768*l.* 1*s.* 6*d.*—in full discharge, if payment of that amount is made within eight days from this date; if not, we reserve to ourselves the right to withdraw the accompanying bills, and deliver others, which will, in all probability, show a much larger balance against the executors, and the preparation of which must, as you may readily conceive, occupy a considerable time, and thus cause still further delay." On being requested to supply detailed particulars of the further work the solicitors refused to comply; and the amount not having been paid within the eight days, a letter requesting a return of the delivered bill in order that a substitute for it might be delivered was sent by the solicitors. The letter was not returned, but instead an application was made to the Court on behalf of the clients that the bill delivered might be taxed, and the question arose whether an order for taxation

could be made, regard being had to the fact that the bill had been delivered subject to a condition. Bacon, V.-C., decided that the bill could not be taxed as it stood, as it was not a perfect bill, and there was no rule which prevented a solicitor withdrawing an imperfect bill. The Court of Appeal reversed this decision, and decided that the bill must be taxed as it stood. The solicitors had imposed a condition which they had no right to impose—the condition was ineffectual—it was not so expressed as to fairly show the clients what the solicitors desired to do, or what the effect of the charges in the bill was. Had the solicitors fairly stated to the clients that the bill contained charges which they could not or might not sustain on taxation, but which at the same time represented work fairly done, and that if the clients did not agree to the bill they would substitute another bill for the purposes of taxation, the Court would have assisted the solicitors and allowed them to withdraw the bill and substitute another for it. Lindley, L.J., said, "I do not mean to say for a moment that bills cannot be sent in subject to a condition, but a solicitor must deal fairly with his client, and I am satisfied (and I say it with regret) from the evidence in this case and the tone of the correspondence that this is a catching, not a fair condition. Messrs. Thompson knew, as far as I can judge from the evidence, that the bill was not an honest bill, not a bill by which they were prepared to stand on taxation. . . . . Had they (the solicitors) or had they not a right to impose a condition? I say yes, if they acted fairly; no, if they acted otherwise, as in my opinion they did." These last words of the learned judge answer the question we have set out above.

II.—PRACTICE CASES.

[The references under Snow and Stoney are made to the last editions of Snow and Winstanley's Annual Practice, and Stoney and Andrews' Judicature Practice. The references under Student's Practice are to the 2nd edition of Gibson and McLean's Student's Practice of the Courts, and not to the last (3rd) edition just published in which the cases are duly incorporated.]

Are executors "persons acting in a fiduciary capacity" within the meaning of sect. 5, sub-sect. 3, of the Debtors Act, 1869, so that if they make default in paying money ordered to be paid by a Court of equity, they can be sent to prison?

Atkinson, Re.

(S. J. 707.)

Smith, J., acting as vacation judge, answered this question in the affirmative.

(Student's Practice, 2nd ed., p. 231.)

If in a Chancery action the defendant makes default in delivering a statement of defence, can the plaintiff obtain judgment on a simple motion to the Court alleging the default of pleading, or must he set down the action to be heard on motion for judgment?

Sheppard v. Edwards.

(S. J. 693.)

Chitty, J., said that the action must be set down for hearing, and until it was so set down he could not give judgment. The practice which, prior to 1876, had been unsettled, was now settled by a notice which was issued in that year.

(Snow, p. 334; Stoney, p. 488; Student's Practice, 2nd ed., p. 153; Order XXVII. r. 11.)

Must a defendant permanently resident out of the jurisdiction give security for costs in respect of his counter-claim?

Sykes v. Sacerdoti.

(S. J. 705.)

If his counter-claim is really a cross-action, that is to say, if it does not arise out of the same matter as the plaintiff's claim, the Court of Appeal decided that the defendant must, when out of the Court's jurisdiction, give security for costs. The case fell within the rule laid down in *Winterbotham* v. *Bradman*. If the counter-claim was but a set-off, that is to say, if it arose out of the plaintiff's claim, possibly security would not be ordered. (See *Mapleson* v. *Massini*, L. R., 5 Q. B. D. 144.)

(Snow, p. 671; Stoney, p. 479; Student's Practice, 2nd ed., p. 96; Ord. LXV. r. 6.)

III.—DIVORCE CASES.

Can the Divorce Court, under the Greek Marriages Act, 1884, declare a marriage between A. and B., members of the Greek Church, valid in a case where the persons who might be entitled to the property of A. and B. on their deaths without children, e.g., their brothers and sisters, had not been cited and made parties to the proceedings?

Zarifi and Wife v. The Att.-Gen.

(S. J. 694.)

Butt, J., said, that under the Act it was not necessary to have the relatives cited; and as it appeared from the evidence that the case fell within the provisions of the Act of 1884, a decree declaring the marriage valid was made.

Can justices make an order for judicial separation, &c., under the Matrimonial Causes Act, 1878, in a case where they have imposed a small fine only (1l.) on a husband convicted of an aggravated assault on his wife?

Wood v. Wood.

(33 W. R. 323.)

Butt, J., said that the mere fact that the fine was small did not prevent the justices exercising the jurisdiction conferred by the Act of 1878. Consequently, he confirmed the order made, directing the parties to live apart, giving the custody of the children under ten to the mother, and directing the husband to pay 1l. a week to the wife for maintenance.

(Stone, p. 120.)

IV.—AN ADMIRALTY CASE.

In a collision action, is the engineer's log book admissible in evidence in a case where the chief engineer, who kept the log, is not called as a witness?

Earl of Dumfries, The.

Butt, J., admitted the evidence, considering that there was no difference between a log book kept by a mate and one kept by the chief engineer; and under the Merchant Shipping Act, 1854 (s. 285), entries in the log book kept by the master or mate were admissible. In other words, a log book kept by an engineer is an "official" log with the meaning of the section.

AN EXPLANATORY EPITOME OF ALL IMPORTANT STATUTES PASSED IN 1885.

Municipal Voters' Relief Act, 1885. (48 & 49 Vict. c. 9.)

For the purpose of voting at a parliamentary election it is by the House Occupiers' Disqualification Removal Act, 1878, specially provided that if a voter lets his house furnished for any period not exceeding four months in the whole of the necessary qualifying period he shall not be disqualified from voting. The present Act makes a similar provision with regard to municipal elections, but with an additional proviso, viz., that during the period for which he has let his house furnished he does not himself reside within seven miles of the borough in which he claims to vote.

Elections (Hours of Poll) Act, 1885. (48 & 49 Vict. c. 11.)

This statute merely provides that for both parliamentary and municipal elections the hours of poll shall be from 8 a.m. to 8 p.m.

The Water Rate Definition Act, 1885. (48 & 49 Vict. c. 34.)

This statute is the result of the famed Dobbs litigation. It provides that "annual value of the tenement supplied with water" used in the Waterworks Clauses Act, 1847, shall within the parishes to which the Metropolis Valuation Act, 1869, extends, mean rateable value as settled by the local authority.

Public Health (Ships, &c.) Act, 1885. (48 & 49 Vict. c. 35.)

The Act of 1875 already makes ships lying in harbour or river subject to the control of the local authority in the same way as a house. The object of this present Act is to make ships subject to the jurisdiction of the local authorities in respect of infectious diseases, &c., so that now the authorities can order ships to be disinfected, clothing destroyed, and may provide hospitals for sick persons from ships, and order their removal to such hospitals; there are other provisions providing for the appointment of permanent port sanitary authorities.

Customs and Inland Revenue Act, 1885. (48 & 49 Vict. c. 51.)

This heterogeneous Act deals with many points. Chief, and most important, are sections 8 and 9, imposing a penalty of 50l. on any brewer or retailer of beer who adulterates beer for sale, or adds any matter or thing (except finings or other matter or thing sanctioned by the Commissioners of Inland Revenue). As, however, such a quantity of curious things are sanctioned, we do not expect to find much improvement in the beer consequent on this enactment.

Part II. of the Act relates to duties on property belonging to bodies corporate and unincorporate. The legislature has come to the conclusion that, as a body corporate or unincorporate never dies, it escapes liability to probate, legacy and succession duties; consequently a large bulk of property escapes very heavy taxes, and the burdens which it should bear fall on other shoulders, making the "incidence of taxation" very unequal.

In future, therefore, it is enacted, such bodies

shall pay duty at 5 per cent. upon the annual income of their property, after deducting expenses.

Certain bodies are exempted from the operation of this clause, *e.g.*, Crown Departments, treasurers of county boards, &c., religious, educational, charitable, literary, scientific or artistic bodies, friendly societies and savings banks, corporate bodies whose capital is so divided and held as to be liable to legacy, &c. duties, property acquired by any bodies corporate or unincorporate within the last thirty years.

What bodies, then, come within the meaning of the section? City companies, and their like. The duty is to be a first charge on the property. An annual return of property is to be made. The Commissioners can, if they choose, assess the duty; and, in short, ample provision is, as usual, made that the tax shall not be evaded.

Another provision of the statute enacts, that securities to bearer shall be stamped with a duty of 1*s.* for every 10*l.* and fractional part.

The concluding sections deal with the income tax. Ignorance of all law as to this tax is better than knowledge.

The Lunacy Acts Amendment Act, 1885. (48 & 49 Vict. c. 52.)

The title is deceptive; the Act is not the long-expected and much-needed general amendment of the lunacy laws; it contains, however, some useful provisions as to pauper lunatics. It will be remembered that the Lunacy Asylums Act of 1853 provides that a relieving officer, &c., may on sworn information apprehend a pauper lunatic. The present statute provides that in cases of great urgency the pauper lunatic may be taken to the workhouse and detained for not more than three days: this will in future obviate the necessity of taking lunatics and persons of unsound mind wandering about at large, in the first instance, to the police court, when, of course, a formal remand always had to be made to enable the authorities to inquire into the matter; the workhouse, moreover, is a more fitting place for the lunatic to be remanded to than the police cell. This section has, no doubt, been passed in consequence of the magistrates drawing attention to the hardship of the existing law.

Further, a justice by this Act now has power to order the lunatic to be kept in the workhouse for any period not exceeding fourteen days, but no detention after that period will be lawful, unless the detention is in accordance with the provisions of the Lunacy Act of 1862. The workhouse authorities will, no doubt, object to this additional duty, for, we take it, it comes practically to this, that lunatics charged with wandering about will pending the application to the justice, and then pending the finding of a suitable asylum for them, be now remanded to the workhouse instead of the prison cell: the alteration was necessary in the interests of humanity.

Public Health (Members and Officers) Act, 1885. (48 & 49 Vict. c. 53.)

Our readers will remember that last year the Public Health (Officers) Act, 1884, was passed (see Vol. III. p. 306), having for its object the reversal of the decision in *Todd* v. *Robinson*, in which it was held that the Court had no power to remit the penalty of 50*l.* incurred by an officer who is concerned or interested in any local board contract under sect. 193 of the Public Health Act, 1875. The statute of 1884 provided that no proceedings for such penalty shall be instituted without the consent of the Attorney-General in writing.

The present Act of 1885 makes a further amendment of sect. 193 of the Public Health Act, 1875; it provides, that, in spite of that section, it shall not be unlawful for a local officer to be concerned in any local board contract relating to lands, rooms or offices; nor to be a member of a joint stock company with which the local authority may enter into contracts; and that the mere fact of his being so interested shall not render him liable to any penalty. But it is provided that all such contracts must be approved by two-thirds of the members of the local board present, and that the meeting shall be convened by a seven days' notice, stating the object of the meeting. On this section generally it will be observed, that although a member of a board may be interested in a contract as to land, rooms or offices, or be a shareholder in a company which accepts a local board contract, there is nothing in the Act authorizing such member to be interested in any other kind of local board contract, *e. g.*, for watering roads, repairing, supplying provisions, &c.; and this statute does not in any way appear to relieve the hardship which recently occurred under the Municipal Corporations Act, in which a councillor got mulcted in 100*l.* penalty, because the borough surveyor had bought some disinfecting powder at his shop, and he had, thoughtlessly,

sat on the board which passed this item in the accounts.

The 3rd section of the Act amends Rule 70 of Schedule II. of the Public Health Act, 1875. That rule provides, that if any person not properly qualified, or not having made the proper declaration, or being disabled from acting, shall, nevertheless, act as a member of the board, he shall be liable to a fine of 50*l.*, recoverable by any person; this amending section provides, that now, in such a case, proceedings must not be taken without the consent of the Attorney-General.

The last section provides, that the fact that a member of a local board has some interest in a newspaper in which advertisements of the local authority are inserted shall not disqualify him, nor oblige him to vacate his office.

The Pluralities Act Amendment Act (48 & 49 Vict. c. 54).

By a statute of 1 & 2 Vict., c. 106 (Church and Clergy Act, 1838), certain persons could be called on by the bishop of the diocese to act as commissioners to inquire as to any charge against a parson of the inadequate performance of his ecclesiastical duties; this provision is repealed, and by sect. 3 of the present Act, the commission must now issue to four commissioners, one of whom shall be an archdeacon or rural dean, another a canon or prebendary, another a beneficed clergyman, and another a justice of the peace, all being of course connected with the district in which the benefice is situate. For the purpose of supplying this commission, deans, chapters and canons, and beneficed clergy of every archdeaconry, are forthwith, after the passing of the Act, to elect one of their body who shall for three years, if called on by the bishop, be liable to serve on such commission. Under this commission, the bishop or any two or more commissioners may require witnesses to attend and produce documents; the witnesses will be examined on oath, and will be liable to the penalties of perjury.

Another section of the Act provides that where an incumbent is non-resident, and the population exceeds 2,000, or there are two or more churches not less than a mile apart, the bishop can require the incumbent to nominate to him two or more persons curates, and if this nomination is not made within three months after requisition, the bishop may appoint two or more curates. The whole of the stipends to the curates must not exceed two-thirds of the income of the benefice, and if the parson objects to the amount allowed to the curates by the bishop he can appeal to the archbishop.

If a benefice becomes vacant the bishop may then assign to a curate a stipend not exceeding 200*l.*, or if more than one curate then the whole stipends must not exceed the net annual income of the benefice; this is not, however, to prejudice other charges created on the benefice under other statutes.

In the event of the incumbent being non-resident, then he must not, without the bishop's permission, resume his duties before the expiration of the time mentioned in his license of non-residence. If he is non-resident for more than twelve months, then he must not interfere with the curate.

The 78th sect. of 1 & 2 Vict. c. 106 is repealed, and now it is provided that if the annual income of a benefice is over 500*l.* a year and the population over 3,000, or if not over that amount there is a second church or district with 400 persons, the bishop can require the parson to appoint a curate to assist; and if he does not do so within three months, then the bishop may appoint one, and give him a stipend not exceeding 150*l.* per annum. The parson has the right to appeal to the archbishop against the order of the bishop to appoint a curate.

The Act further provides that two benefices may be held together by dispensation, if the churches are within four miles of one another and the annual income of one does not exceed 200*l.*; but in no other case shall it be lawful for a clergyman to hold two benefices.

The last section provides that notices, &c. may be sent by post in registered letter, and if a clergyman is out of England without license of non-residence, monitions, &c., may be served at his place of residence.

Ecclesiastical Commissioners Act, 1840, Amendment Act, 1885. (48 & 49 Vict. c. 55.)

This statute authorises the Ecclesiastical Commissioners to raise the income of an archdeacon to 200*l.* per annum; and this notwithstanding that this power of augmentation, either under this Act or 3 & 4 Vict. c. 113 (the Act of 1840), has already been exercised in favour of the same archdeacon. But it is expressly provided, in no case is the total average income of an archdeacon to be augmented beyond 200*l.* per annum.

The Corrupt Practices Parliamentary Elections Amendment Act, 1885. (48 & 49 Vict. c. 56.)

The object of this statute is to make it lawful for employers to allow their workmen to go and vote without deducting any part of their wages. It provides that such absence without deduction shall not be illegal if permission without deduction is, as far as possible, given to all in their employment alike. The statute is, of course, meant to meet the case of a Liberal or Tory employer permitting his workmen to go and vote. If he gives the Tory voters leave he must do the same with the Liberal voters, and *vice versâ*. We should certainly have thought that the case was met by the existing statute, and did not require this amending Act.

The Patents (Amendment) Act, 1885. (48 & 49 Vict. c. 63.)

This amending Act came into force on the 14th August last, and is to be read as one with the Act of 1884. Sect. 2, we assume, was rendered necessary in consequence of the zeal of that astute official who insisted that the "declaration" required by the main Act was a statutory declaration requiring a half-crown fee: this new section says such declaration may either be a statutory declaration or not as may be prescribed by the rules of the office. The 3rd section deals with the time within which a complete specification must be left, accepted and sealed. Our readers will remember that under the Act of 1883 the time within which a complete specification has to be left is nine months; accepted within twelve, and sealed within fifteen: this section (3) now provides that the comptroller may extend the period for leaving the specification by any period not exceeding a month; for accepting it by any period not exceeding three months; and when such extended time has been granted, then a further four months will be added for sealing to the fifteen already allowed. The 4th section meets a genuine grievance; it provides that when an application has been abandoned or becomes void, the specification or drawings shall in future not be published nor be open to public inspection. No doubt many an idea has been developed into a grand invention from a hint acquired when inspecting abandoned specifications; the amendment will act well for poor inventors unable for a time to proceed, but not advantageously for the public. The Act of 1883, it will be also remembered, provided that a patent might be granted to several persons jointly: it would be pleasing to know the critical official who raised the doubts making sect. 5 of the amending Act necessary. It was doubtful, says this section, whether the main Act meant that all the persons to whom the patent is granted must be joint inventors, or whether one applicant might find the brains and the other or others the money; this latter construction it is now provided shall be deemed the correct one; we should have thought the section of the main Act admitted of no doubt, the spirit of that statute evidently being to enable a hard-up inventor to acquire the support of the moneyed capitalist.

Criminal Law Amendment Act, 1885. (48 & 49 Vict. c. 69.)

This important statute, introducing as it does great changes in the law, cannot be summarily dismissed, but demands careful attention. It is divided into three parts. The first part has for its object the protection of women and girls; the second, the suppression of brothels; and the third and last includes definitions and miscellaneous provisions.

The second section, the first which requires notice, deals with the offence of procuration. This offence, we find, is by the Act divided into four heads—first, we have procuration or attempted procuration of any girl under twenty-one, not a known prostitute, for the purpose of unlawful connection, either within or without the Queen's dominions; secondly, procuring any woman or girl to become a prostitute; thirdly, getting any woman or girl to leave the kingdom for the purpose of taking her to a brothel; and, fourthly and lastly, taking a woman or girl from her home to a brothel within the kingdom. The three last heads, it will be observed, apply whether the girl is under or over age. The offence is in each case a misdemeanor. The imprisonment must not exceed two years, either with or without hard labour. No conviction in any of these cases can be procured on the evidence of one witness only, unless such evidence is corroborated in some material particular by other evidence implicating the accused. This last clause, we assume, would meet a case in which one witness gave evidence in support of the conviction and the prosecution also put in a letter written by the accused to the girl making suggestions to her.

The third section is subdivided also into three

heads: (a) procuration for unlawful connection by threats or intimidation; (b) by false pretences, &c., procuring any woman to have unlawful connection; and (c) to administer any drug, matter or thing with intent to stupefy, &c., and so have unlawful connection. All these offences are now made misdemeanors, the imprisonment is also not exceeding two years with or without hard labour, and there is a similar provision as to corroboration of evidence. It will be noticed that all three apply, whether within or without the Queen's dominions, and also to women and girls whether under or over age. A point which will no doubt arise is, whether "drug, &c." will include drink; from observations made by members in the House, this was so intended.

The fourth section has for its special object the protection of girls under the age of thirteen. With this object it is divided into two heads: the first provides that unlawful connection with such a girl shall be a felony punishable with penal servitude for life or not less than five years, or imprisonment not exceeding two years with or without hard labour: the second head provides for an attempt to commit the above offence, and makes it a misdemeanor with punishment of imprisonment not exceeding two years with or without hard labour. The child may, if the Court thinks fit, give evidence without being sworn if it appears to understand the duty of speaking the truth; the testimony must be corroborated by other implicating material evidence, and the child allowed to give evidence in this way may be prosecuted for perjury. This would appear to be scarcely a satisfactory clause; the point arises, can a child understand the duty of speaking the truth any better than the duty of not swearing falsely when on oath? The section also contains a provision that, if the offender is under sixteen, he may be whipped and sent to a reformatory school. It is necessary here to somewhat anticipate and draw attention to sect. 9, which provides that on an indictment for rape or an offence which under this sect. 4 is a felony, the defendant may be acquitted, and convicted instead under sects. 3, 4 or 5 of the Act, of an indecent assault.

The concluding clause of sect. 4 deals with a question entirely foreign to its main object, and is an apt illustration of our haphazard system of legislation. It will be remembered, that case law had not quite definitely decided whether to procure connection with a married woman by personating her husband was or was not rape: this concluding clause now provides that the offence shall be rape.

We now come to sect. 5, dealing with girls between the ages of thirteen and sixteen, and idiot or imbecile women; the offence is in both cases made a misdemeanor, with imprisonment not exceeding two years, with or without hard labour; but, in the first case, the accused may plead that he had reasonable cause to believe that the girl was sixteen or over, and the prosecution must be commenced within three months from the offence; it will be noticed that these two provisions do not apply to the second half of the section, that dealing with idiots and lunatics.

The 6th section now claims attention. If the owner or occupier of premises knowingly allows such premises to be used for unlawful connection with children under thirteen, he is guilty of a felony, the maximum punishment being penal servitude for life; if the girl is over thirteen, but under sixteen, the offence is a misdemeanor, the punishment two years' imprisonment, &c.; but reasonable belief that the girl was sixteen, or over, is a good defence.

The 7th section makes the abduction of a girl under eighteen a misdemeanor, with imprisonment not exceeding two years, &c.; but here, again, reasonable cause of belief that the girl was of or over eighteen is a good defence.

The 8th section deals with the offence of detaining a woman against her will in any premises, or in a brothel. It makes the offence a misdemeanor, with imprisonment not exceeding two years, &c. Withholding wearing apparel, or threatening legal proceedings for taking away wearing apparel lent, will be deemed detention within the section; and if a woman takes away only sufficient lent wearing apparel to enable her to leave the premises, she shall not be liable to any civil or criminal proceedings.

Sect. 10—one of the most, if not the most, important section in the Act—confers an ample power of search. It is too lengthy to set out in detail; but, shortly, a justice may on sworn information of any parent, relative or guardian, that a woman or girl is unlawfully detained for immoral purposes, issue a search warrant; detention for immoral purposes arises, as of course, when the girl is under sixteen; if over sixteen, and under eighteen, when it is against her own will, or that of her father or mother, or person having charge of her; and, if over eighteen, then only when detained against her own will. The warrant,

it should be noted, must be executed by a superintendent, inspector, or other like officer of the police: presumably, therefore, not an ordinary constable.

The 12th section, which is the next in importance, allows the Court to deprive parents, &c. of the guardianship of their girls under sixteen when they have encouraged them in immorality.

We must now turn to Part II., dealing with the suppression of brothels. A brothel keeper, a tenant or lessee or occupier, a lessee or landlord, or agent of a lessee or landlord, knowingly allowing premises to be let or to be used for prostitution, will be liable on summary conviction for (1) first offence, maximum fine 20*l.*, maximum imprisonment three months with or without hard labour; (2) second offence, maximum fine 40*l.*, maximum imprisonment four months, with or without hard labour; (3) third or subsequent offence, in addition to last-mentioned penalty or imprisonment, recognizances with or without sureties for twelve months or additional imprisonment not exceeding three months: as to this additional three months the Act is silent whether it is to be with or without hard labour. From a conviction under this section an appeal lies to quarter sessions.

The remaining important sections, contained in Part III., may be soon disposed of. The Act is not to free a person from any other proceeding at common law or by statute, provided, of course, that he is not punished twice for the same offence. All misdemeanors under the Act are to be deemed to be within the Vexatious Indictments Act (22 & 23 Vict. c. 17). Costs of a prosecution may be ordered to be paid by the offender if convicted, and husband and wife are made competent but not compellable witnesses in all prosecutions under this Act and under 24 & 25 Vict. c. 100, sects. 48 and 52—55, and at any stage of the hearing, except the inquiry before the grand jury. The Offences against the Person Act, 1875, is repealed.

A most important alteration in the law of evidence is made by sect. 20; that section provides that every person charged with an offence under this Act, or under certain sections of 24 & 25 Vict. c. 100, and the husband and wife of such person shall be competent but not compellable witnesses at every hearing of every stage of the proceedings, except on the inquiry before the grand jury: already at Wolverhampton a man accused under the new Act has elected to give evidence in his own defence. But it must be borne in mind that this right of giving evidence can, in future, be claimed not only in respect of offences under this Act, but also in charges of (a) rape, (b) indecent assault, (c) unlawfully taking away a girl under sixteen, (d) abducting an heiress, (e) abducting by force with intent to marry; these being the offences coming within the sections of 24 & 25 Vict. c. 100 above mentioned. Some more points must arise in connection with this right: how far can the accused exercise this right when two charges are brought against him, he being in one case entitled to give evidence and in another case not entitled? and again, how about the right of the prosecution to reply? points of this kind will no doubt require the attention of the Court for Crown Cases Reserved.

Housing of Working Classes Act, 1885. (48 & 49 Vict. c. 72.)

The object of this Act is the provision of suitable dwellings for the working classes; with this view power is given to different authorities—in the City of London, the Commissioners of Sewers; in the Metropolis, the Metropolitan Board of Works; urban sanitary authorities and rural sanitary authorities—to adopt the Labouring Classes Lodging Acts, 1851 to 1867. The application to adopt must be made to the Local Government Board, who have a discretionary power as to the advisability of such adoption, and are to certify accordingly.

The term "lodging houses," it is provided, used in the Acts of 1851 to 1867, shall be deemed to include separate houses or cottages, whether containing one or more tenements. Further, sites of disused metropolitan prisons may be sold for the objects of the Act to the authorities exercising the powers under the Act at a fair market price.

The Artizans' Dwellings Act, 1868, is amended. Under that Act, when the owner of premises had been ordered to execute any works or to pull down any premises, he used to possess the power to compel the local authority to purchase such property, or, in other words, in many instances he got quit of most undesirable property, transferred the burden of it to the local authority, and, in addition, got paid: this he can no longer do.

By section 5 certain provisions of the Artizans' and Labourers' Dwellings Improvement Acts, 1875 to 1882, are extended to all urban sanitary districts; to discuss these at length would, we fear, occupy too much space.

A much needed declaration is made by section 7

that it is the duty of local sanitary authorities to put in force the various powers they possess to secure their districts being in a proper sanitary condition.

The Public Health Act, 1875, authorises the Local Government Board to declare that the sanitary authority of a district shall have power to make bye-laws with respect to lodging houses. This provision is amended, and every local sanitary authority will in future have the power to make bye-laws under sect. 90 of the 1875 Act, without any declaration of the Local Government Board.

The next section of the Act gives sanitary authorities very much needed powers to make bye-laws for regulating tents and vans used for human habitation. They now also have power to appoint some person to inspect any such tents, vans, &c., any time during the day. And to obstruct any such inspector in the performance of his duties, entails a fine not exceeding 40*s*. If the inspector reports that they are a nuisance or dangerous to health, or overcrowded, then they will be deemed a nuisance within the Public Health Act, 1875.

The next important point in the Act is the section which amends the Settled Land Act, 1882, and provides that a tenant for life may sell, &c., land for the purpose of erecting buildings for the working classes, and that such a sale shall be valid although a larger price might have been obtained for the land if sold for another purpose, provided only that the price absolutely obtained was as good as could be reasonably obtained, bearing in mind the purpose for which the land was sold, &c. Further, the erection of dwellings for the working classes is to be deemed an improvement within the Settled Land Act, 1882, on which capital money may be laid out, provided that the building of such dwellings will not in the opinion of the Court be injurious to the estate.

Corporate bodies holding land are also empowered to sell their lands at a less price for this purpose than they might otherwise obtain, provided only they get the best price they can reasonably get considering the purpose for which sold.

The next and last important section was intended to be made applicable to all houses, but the opposition was too strong, and finally its operation was cut down to houses intended for habitation by the working classes. It provides that in such cases there shall be an implied condition that the house is, at the commencement of the holding, in all respects reasonably fit for habitation. As proof of the breach of this implied condition will, of course, subject a landlord to a liability for damages, it becomes most important to ascertain what houses come within the operation of the section. The section we find says "every house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by sect. 3 of the Poor Rate Assessment or Collection Act, 1869."

Reference to this Act shows that the limits are as follows in England—in the metropolis 20*l*.; in the borough of Liverpool 13*l*.; in the city of Manchester or borough of Birmingham 10*l*.; anywhere else 8*l*. The new Act itself makes provision for Scotland or Ireland, and provides that in these cases the limit is to be 4*l*.

Owners of small house property must not, therefore, forget, that in all contracts made after the passing of this Act they are impliedly liable for damages if the house is not reasonably fit for human habitation.

The misery of slums excites so much sympathy that one scarcely dares suggest that apparently this liability can be easily avoided. The section does not say that it shall be unlawful to expressly contract that the landlord shall not be so liable; and from the dangerous precedent set by *Griffiths* v. *Earl of Dudley*, showing that the Employers' Liability Act can be excluded, and the implied statutory acknowledgment which this principle has received from certain Acts having special sections that their provisions cannot be excluded, it seems established, that any remedial Act can by express agreement between the parties be excluded. Landlords, therefore, need not be much afraid of the new section; they have, as of old, the remedy in their own hands: people must have a hovel to slink into at night, and this hovel can only be obtained on the landlord's terms. Even if they forget to make their tenants expressly agree not to take advantage of the section, they still have not much to fear: how can miserable hovel-dwellers, if they dared, bring an action for damages against their landlords? The section is but a "sop in the pan" to those hounds who arouse public opinion by unearthing slum misery.

Evidence by Commission Act, 1885.
(48 & 49 Vict. c. 74.)

This statute provides that in all civil actions in which a commission or mandamus has been issued to any Court or judge in India, the colonies or

elsewhere in Her Majesty's dominions, but beyond the jurisdiction of the Court which issues the mandamus, the Court or judge to which the mandamus has been issued may appoint an examiner to take the evidence instead of taking such evidence itself or himself.

A similar provision is also made with regard to criminal proceedings, in which case a particular judge or magistrate may be nominated to take the evidence.

All the provisions of the Evidence by Commission Act, 1859 (22 Vict. c. 20) as to conduct money to witnesses, costs of proceedings, &c., are to apply to proceedings taken under this Act, and the Act of 1859 is moreover itself amended, and the power given by that Act and this new Act to make all necessary rules is to include a further power to make rules as to paying the witnesses and the examiner.

Lastly, it is provided that any witness examined under this Act may give evidence on oath, affirmation, or otherwise according to the law of the place where the examination is taken.

Prevention of Crimes Act, 1871, Amendment Act, 1885. (48 & 49 Vict. c. 75.)

The 12th section of the Act of 1871 provides, that any person convicted of an assault on a constable shall be liable to pay a penalty not exceeding 20*l.*, or, in default, to be imprisoned, with or without hard labour, for a term not exceeding six months, or, in case of a similar conviction within two years, nine months, with or without hard labour. This amending Act provides, that in future, on such a conviction, the penalty shall not in any case be more than 5*l.*, or, in default of payment, to be imprisoned, with or without hard labour, for a longer term than two months. We can only assume that assaults on police constables in the execution of their duties have lessened considerably. We must confess we have not ourselves observed any diminution of these cases in the police courts.

Thames Preservation Act, 1885. (48 & 49 Vict. c. 76.)

The preamble of the bill—that the River Thames "has come to be largely used as a place of public recreation and resort"—makes a justification for lengthy remarks on this statute unnecessary. There is no doubt that the river is now largely—some may say too largely—used as a place of public resort, and that an Act is necessary to regulate the navigation, keep public order, and prevent nuisances, to the intent that it be preserved as a place of regulated public recreation. That it will be a regulated place no one can have any reasonable doubt after perusing the sections. Stringent bye-laws, bailiffs and conservancy servants sworn in as police constables, registration of boats, fines, penalties, summary convictions, truly a model aquatic Epping Forest!

The Act starts excellently well: it distinctly lays down that the public have a right of navigation over every part of the Thames backwaters, creeks, inlets, &c., "through which Thames water flows," with a proper saving clause to protect artificial inlets made for drainage, &c., or to moats, boathouses, ponds, &c. From henceforth, then, we possess right of passage up and through all and every beautiful creek and backwater to which a warning notice has hitherto barred our entrance. So one is led to imagine, but this in reality is not so: the Act gives a lawful title to private persons to exclude the public from all channels which have been enjoyed as private channels for twenty years before the passing of the Act. This, indeed, is mockery. This does not confirm the free right of navigation to the public established by Magna Charta; on the contrary it legalizes encroachments, provided their character is only mellowed by age. Why, as every "boatist" knows, all the principal backwaters have been enjoyed as private channels for more than twenty years. At the most, the Act in this particular will only operate to prevent future trespasses on public rights.

The right of navigation is to include the right of mooring and anchoring for "a reasonable time in the ordinary course of pleasure navigation," but special bye-laws are to be made by the Conservators to prevent any house-boat or steam launch from annoying any riparian proprietor. This appears a device to give riparian proprietors increased power to annoy steam launches and house-boats; which cannot now at common law moor to the land of the owners of houses; they could be ordered off, cut adrift, or the owners proceeded against for trespass; why then are special regulations necessary to protect river proprietors from annoyance?

The regulations to be made for the prevention of pollution of the river from the sewage of any steam launch or house-boat are doubtless theoretically excellent; practically the idea is ludicrous.

Let the Conservators look to the many undetected drain pipes sneaking their nasty slime into the river from adjoining houses, farms and pig-styes, and remember their attempts to stop the Chertsey authorities from draining into the Thames. When these duties are performed it will be time enough to call for special regulations in connection with pollution by steam launches. Further, it is provided that nothing in the Act shall be deemed to take away the legal rights of a riparian owner in the bed or soil of the river, or any legal remedies which he may now possess to prevent mooring, loitering, &c. Lord Bramwell in the House of Lords stated that a riparian owner undoubtedly at common law possessed the right to cut any boat adrift which either moored to his land or in the soil of his half of the river, or he could bring an action for trespass. Having preserved this right by insertion of this clause his lordship's acumen is necessary to reconcile the opening and concluding paragraphs of sect. 4: if the public have a right to moor for a reasonable time, the river proprietors have apparently an equal right to cut them adrift.

All obstructions which have not been maintained for twenty years or more are to be removed; it will be curious to see how many disappear in consequence of this section. The sixth and concluding section of the first part provides that shooting on the river or tow paths shall be punished by a fine not exceeding 40*s.*, or, in the case of a continuing offence, not exceeding 5*l.*; a continuing offence appears to be one which is repeated or continued after due notice. This provision against shooting is the one redeeming feature in the Act.

In future boats and vessels—the definition includes all kinds of river craft, from a ship to a Niagara canoe—whether private or hired must be registered with the true names and addresses of the owners. Private boats are to be distinguished by a registered number, crest, badge or mark, as the Conservancy may decide, and boats for hire by a registered number; and these distinctive marks or numbers will have to be conspicuously exhibited. Registration once in every three years will be necessary, the fee for a boat being 2*s.* 6*d.*, and for a house-boat 5*l.* and upwards according to size. The sections which provide that every boat is to be deemed in charge of one person, who is to be responsible for order, and who will be held liable under the Act for an offence committed, will probably operate to render the position of captain, or in familiar language, "boss," not so greatly sought after.

Amongst the general powers conferred on the Board by the Act, we find that of holding land for the purposes of a public highway, for bathing places, camping grounds, landing places, &c. Who is likely to dedicate to the Conservators for public uses any land for such purposes? Why did not the statute complete its little scarcasm by allowing the impecunious Board to purchase land? The history of this section is probably this: the report of the Commission was entirely against the rights of the public as to the user of tow paths for walking, or, in fact, for anything but strictly towing purposes, or of islands for camping or landing purposes. Of course any amateur lawyer could have answered that question. The right of towing appears to have been confirmed by a statute of James I. for business, not pleasure purposes. The right of walking on the tow path without towing could only have been acquired by prescription; and the Commission had no hesitation in determining that the public had not acquired that right. The power of the Conservancy Board will, however, be very useful when some public-spirited body is found willing to purchase from the river proprietors what they naturally object to give.

The board are also empowered to acquire any right that a person may have of abstracting water from the river; and the chief abstractors of water, the water companies, whose enormous demands are exhausting the river, are to be allowed to contribute money for this purpose. In other words, the water companies will use the Conservancy as a cat's paw to protect their own interests against mill owners, &c., in the upper reaches, whose little abstractions of water, when prevented and accumulated, will increase the companies' supply in the lower reaches.

We only regret that the purposes for which the Board are, by the 19th section, allowed to make bye-laws have not been met by the Act itself. For many reasons we dread the bye-laws made by the Board.

The purposes for which they may be made are as follows:—

(1) To prevent offences against decency by persons using the river, &c.

(2) To prevent disorderly conduct or the use of obscene language, &c.

(3) To prevent any nuisance to riparian residents or others by persons using the river.

(4) To prevent trespasses upon any riparian dwelling-houses or gardens.

(5) To regulate the navigation with a view to safety, &c.

(6) To prevent injury to flowers, plants, trees, &c.

(7) To prevent bird-catching, fowling, shooting, hunting, sporting, &c.

(8) To preserve the various notice-boards set up by the Conservators or with their consent, &c.

(9) To prevent disturbance of navigation.

(10) As to registering and licensing boats or vessels, and for regulating the conditions of licences, and the letting or hiring of boats, vessels, conveyances, horses or other animals, in connection with the purposes of this Act.

(11) As to imposing penalties for breaches of bye-laws.

A few remarks on these eleven heads. The first two are very proper objects indeed, and will meet an evil that has lately grown intolerable. But why is the third necessary? if the two first evils referred to are effectually suppressed, what nuisance will river owners suffer from? Again, why is number four necessary? have they not already a sufficient remedy against trespassers? The fifth head seems also useless; the Conservancy have power and do regulate the navigation already. The sixth and seventh are most desirable. It is to be sincerely hoped that for the tenth head the bye-laws will be carefully drawn and not made unduly stringent.

The part relating to procedure can be easily disposed of: the penalty is not to exceed 40*s.*, for a continuing offence 5*l.*, recoverable on summary conviction; and all moneys paid under the Act are to go to the Conservancy Board.

We should not have so severely criticised the Act if we did not feel sure that there are some grave and serious defects. It was passed with much flourish of trumpets in the interest of the public and in the protection of their rights. We frankly concede with regret that the condition of the river in parts called urgently for statutory interference, but an Act of an entirely different character was required, one partaking more of the nature of a River Police Bill. The statute which has just become law, while professing to confirm the public in ancient rights dating back to Magna Charta, has in various ways legalized unlawful encroachments and placed the public at the mercy of the Conservancy Board whose power of framing bye-laws appears to be unlimited. We await these bye-laws, and intend to again revert to this question which so intimately concerns thousands of toiling and moiling Londoners; the bye-laws, we fully expect, will require even more severe criticism. We must not forget the positions the gentlemen who sit on the Conservancy Board occupy in the world. They are one and all, we believe, riparian owners, and their opinions of the troubles from which the grand old river now suffers must naturally be very different to that of the humble paddler who has to support his right of navigation by appealing to Magna Charta.

ACTS AMENDING THE YORKSHIRE REGISTRIES ACT, 1884.

Two amending statutes to this important Act have received the royal sanction. By the first, 48 Vict. c. 4, it is provided that in sect. 43 of the Act of 1884, the words "before the commencement of this Act" shall be substituted for the words "before the passing of this Act." The date of the passing of the Act was 7th August, 1884, and the date of its commencement 1st January, 1885.

The second amending statute, 48 & 49 Vict. c. 26, is more important.

By sect. 3, it is provided that sect. 10 of the Act of 1884 shall be repealed. That section made provision for the entry of caveats in the registry respecting lands in Yorkshire, and provided that such caveats should be in force for such period, not exceeding six months, as might be named in the caveat. Instead of that sect. 10, is substituted the following provision, under which it will be seen there is no limit to six months, but subject to rules to be made a caveat may be in force for any period named in it:—

"Subject to any rules made under the principal Act, a caveat may at any time be given with respect to any lands within any of the three ridings by any person claiming to be entitled to any interest in such lands in favour of any person named therein, and may be registered under the principal Act; and every caveat so registered shall, unless removed or cancelled in accordance with any rules to be made for that purpose under the principal Act, remain in force for such time as may be specified therein in that behalf.

"Every such caveat shall be under the hand and seal of the person by whom it is given, and attested by one witness at the least, and shall contain,—

"(a) The date on which it is given:
"(b) The name and description of the residence and occupation of the person by whom it is given:
"(c) The name and description of the residence and occupation of the person in whose favour it is given:
"(d) A statement of the time for which it is intended to remain in force:
"(e) A description of the lands to be affected by such caveat, and the names of all the parishes wherein the same are situate.

If within the time during which any caveat remains in force any assurance made or executed by the person by whom such caveat was given in favour of the person in whose favour such caveat was given, or his heirs, executors, administrators, or assigns, be duly registered under this Act, such assurance shall have priority as though it had been registered upon the date on which such caveat was registered; and such last-mentioned date shall be deemed to be the date of registration of the said assurance for all purposes, and shall be substituted in all certificates and other instruments for the date on which such assurance was actually presented for enrolment accordingly."

The repeal of sect. 10 does not affect caveats given prior to the commencement of the Act (16th July, 1885).

By sect. 14 of the Act of 1884, it is provided that all assurances entitled to be registered under the Act shall have priority according to the date of registration, and not according to the date of such assurances, or of the execution thereof, and every will *registered* under this Act shall have priority according to the date of the death of the testator, &c. Now, by sect. 4 of the amending Act it is provided that the word "registered," which we have placed in italics, shall be read "entitled to be registered." The rest of the section, which in effect reverses, as to lands in Yorkshire, the decision in *Le Neve* v. *Le Neve*, remains in full force.

By sect. 15 of the Act of 1884, it was provided that the registration of any instrument under the Act should be deemed to constitute actual notice of such instrument, and of the fact of such registration, to all persons and for all purposes whatsoever as from the date of registration. Now, by sect. 5 of the amending Act this section is repealed, and consequently the old law, that registration of an incumbrance is not notice to a subsequent purchaser unless he searches (and he is not bound to search), is restored.

THE LAW OF WILLS.

(*Continued from p. 271, Vol. III.*)

V.

Can a married Woman make a Will?

On this particular question sect. 8 of the Wills Act, 1837, enacts that "no will made by any married woman shall be valid except such a will as might have been made by a married woman before the passing of the Act." To fully comprehend the effect of this—on the face of it—uninstructive section, it behoves us to see how the law stood prior to 1837.

A married woman, prior to her enfranchisement by the recent Married Women's Property Acts, was under disability for most purposes; and among other things she could not make a will, and for the very good reason that she had during coverture no independent legal status. This was the general rule, but it admitted of several exceptions, and it is to these excepted cases that the provision of the Wills Act, which we have set out, refers. Let us, as briefly as the subject will permit, examine these exceptions one by one:

1. *The Queen Consort could make a Will.*

We are told in Blackstone that the ordinary principle of law, by which a married woman was incapacitated from making a will of personal chattels without her husband's assent, did not apply to the Queen Consort, who has accordingly been always allowed to bequeath her chattels—but not devise her lands—without the consent of her lord. And it may be taken, though we do not believe the question has ever been expressly decided by the Courts, that the Queen Consort is, as far as the purpose of testamentary alienation of her chattels is concerned, in exactly the same position as a *feme sole*, and consequently, that her will will speak from her death, and not from its date, and be regulated by all the ordinary rules applicable to wills of persons who are *sui juris*.

2. *A married woman could make a will of personal chattels with the assent of her husband.*

We are told by Glanvil that a married woman could, with her husband's assent, make a will of one third part of her—or rather his, for in those days the chattels passed absolutely to the husband—chattels; and in Bracton's time, with such assent, it appears that a married woman could not only bequeath her chattels which had vested in her husband in his marital rights, but could also pass

by her will a portion of his chattels—a peculiar power which, we are told, is supposed to be a remnant of the law of community of goods, once prevalent in England.

And while the power to dispose of chattels which were the husband's in his own right soon dropped through, the power of disposing of those chattels which had become the husband's in right of his wife continued, and was applicable in course of time to the whole of the chattels; but it will be borne in mind that the will was useless unless it was made with the husband's assent, for the chattels were his, and his wife had no power over them except as far as he assented to her disposition of them by will. And it was held that it was not sufficient for the husband to give a general assent to his wife's making what will she pleased; he had to assent to the particular identical will, that is to say, on seeking probate of such a will, it was necessary to show that the husband knew of the will in question and had signified his assent to it. (*Rex* v. *Bettenworth*, 2 Strange, 891.)

Not only was the assent necessary to the making of the will, but the consent of the husband to its being proved was required; that is to say, a will thus made was not admitted to probate unless the authorities were satisfied that since the death of the wife the husband had agreed to allow the will to be proved; and consequently such a will of a married woman became at once inoperative if her husband died in her lifetime, for he then became unable to ratify after her death what he had assented to during coverture, and without such ratification the will was but waste paper. It will be seen from this that the husband, in giving his wife his assent to her making a will of personal chattels, was not doing anything very generous or unselfish, for he could, if he survived his wife, prevent the will becoming operative by refusing to ratify what he had done; and if he predeceased her he knew that the will would be inoperative. A man could in fact humour his wife by allowing her to give her chattels to objects of her choice, and then when she was no longer alive he could defeat her wishes and retain the chattels just as if he had never given any such consent.

The husband's consent to probate—his ratification after his wife's death of the assent given to her will—can be implied; and it has been recently held that if the husband survives his wife and does not expressly dissent to her will made with his assent, and then dies, it will be assumed that he tacitly gave his consent, and probate of the will will be allowed. (*Cooper, Re*, 50 L. J., P. D. & A. 41.)

And further, it has been held that when a husband has, after his wife's death and before probate, confirmed the will, he is debarred from retracting his consent, and the will will be admitted to probate (*Maas* v. *Sheffield*, 4 L. C. 350); and so the statement that a wife's will is revocable *at any time before proof* is not strictly correct. It will be seen that this disposition of chattels by a married woman derives its effect from the husband's sanction, and is not the result of her independent volition, and consequently the will can hardly be the *will* of the woman, though made by her.

It will be observed that we have spoken only of chattels personal; for of a married woman's chattels real and landed property generally (unless settled to the woman's separate use, as to which hereafter), the law permitted no testamentary disposition, even with the husband's assent; indeed, such disposition was forbidden by statute law. (32 Hen. 8, c. 1; and 34 & 35 Hen. 8, c. 5, s. 14.)

Lastly, as the husband's assent had to be to the particular will, it follows that the will only included those chattels which were bequeathed by it; and consequently this will might be said to speak from its date, and not from the death of the testatrix; and this is still so, notwithstanding that as to wills generally the Wills Act makes them speak from death; for, by the section we have set out, the Act did not in any way extend the power of married women to make a will.

This law is still applicable to personal chattels which passed to a man in right of his wife prior to the 1st January, 1883; but with regard to chattels acquired by a married woman on or since that date, the above-stated law has no application, for the chattels, by virtue of the Married Women's Property Act, 1882, belong to the woman for her separate use, and she can dispose of them by will or otherwise as if a *feme sole;* and the husband's assent to the making of the will of them is as unnecessary as his consent to the probate of any will of them which may be made.

3. *A married woman could exercise a power of appointment over property by will.*

The exceptions we have already treated of only extended to chattels personal; but this third exception applied equally to landed property as to chattels; and if any kind of property was limited to such uses, or for such persons, as a married woman should appoint, the donee of the power,

though under disability, was able to appoint the property by will in favour of anyone (including her husband) whom she might think proper to select. This rule opened out a very easy method of evading the law that a married woman was incapacitated from making a will, since, by a little care in framing deeds and wills of property in favour of married women, they acquired full power of disposition over the property. On what principle was such an exception—permitting, as it did, of such an easy evasion of the existing law—recognized? On this: the woman was not the real maker of the will at all, she was but the agent of the person who gave her power—her will conveyed nothing; she merely filled in the name of some devisee or legatee who was considered to take from the donor, and not the donee, of the power. The will did not pass any interest in the property which belonged to the testatrix, nor did it pass any property belonging to her husband; and, construing this strictly, it was formerly held that the exception did not apply so as to enable a woman to dispose by will of property in which she had an interest as well as over which she had a power. However, this restriction does not seem to have existed in more recent times: for it is laid down in Sugden on Powers, that a married woman may execute a power "whether appendant in gross or simply collateral, and as well over a copyhold as over a freehold estate."

As falling within the exception we are treating of, it has been held that a married woman may make a will in pursuance of an ante-nuptial agreement that she shall be at liberty to do so, or even in pursuance of a post-nuptial agreement if supported by a valuable consideration. (See 1 Roper on Legacies, 1077; and *Wright* v. *Cadogan*, 2 Eden, 239.)

As concluding remarks on this exception we may mention that if the husband, by undue influence, induced the exercise of the power in his favour, the will would be declared invalid (*Marsh* v. *Tyrrell*, 2 Hagg. E. R. 84); and if in a case where the power was exercised in favour of some third person he compelled his wife to destroy the will, the Court would direct the will to be established if proof were forthcoming of its contents, execution and destruction. (*Williams* v. *Baker*, cited in Wms. Exors. 8th ed. p. 61.)

The will of a married woman made in pursuance of a power would seem still only to speak from its date, for the Wills Act gives it no greater validity than it had before, and the provisions of the Married Women's Property Act, 1882, will not affect such a will (see *Price* v. *Parker*, 16 Sim. 198; and *Trimmell* v. *Fell*, 16 Be. 539); but the provision of sect. 27 of the Act that a general devise or bequest of property shall include property over which the testator had a power to appoint as he liked would be applied to the will of a married woman made under a general power, and therefore no reference to the power in the will would, as formerly be necessary. Further, the provision of section 10, to the effect that two witnesses to a will made in exercise of a power of appointment are sufficient, though more witnesses may be required by the instrument giving the power, applies to a married woman's will, and so it would seem the other provisions of the Act applicable to powers apply to wills of married women. (*Bernard* v. *Minshull*, Joh. 276; *Clifford* v. *Clifford*, 9 Ha. 675.)

When probate is granted of a married woman's will made under a power, the power has to be specified in the grant, and it is thus made known at the registry. (Probate Rules, 15.)

4. *A married woman could make a will of property settled for her separate use.*

With regard to all kinds of personal property settled to the separate use of a married woman, it has long been regarded as settled that it would pass by the will of its owner, and this power of the owner over separate use personal property was recognized by the Courts as early as 1639 in *Gorge* v. *Chansey* (Rep. in Ch. 67), and this whether the property was separate use property by virtue of an ante-nuptial agreement or by any other means (*Fettiplace* v. *Gorges*, 1 Ves. 46). And the power to dispose of such property by will enabled the owner to give it to her husband as well as to a stranger, and if she thought proper to create an annuity out of it. (See *Parkes* v. *White*, 11 Ves. 222; and *Essex* v. *Atkins*, 14 Ves. 542.)

And the power extended to reversionary interest in personalty as well as to interests in possession, and to contingent as well as vested interests. (*Sturgis* v. *Corp*, 13 Ves. 120; *Headen* v. *Rosher*, 1 McL. & G. 89; *Lechmere* v. *Brotheridge*, 32 Beav. 353.)

With regard, however, to real property belonging in fee to a married woman for her separate use, there appears to have been very considerable doubt whether the owner had the power to devise the equitable fee away from her heir, and this doubt was not set at rest until long after the passing of the Wills Act. For it was reasonably asked by the Court, how can the fee be "separate estate," since separate estate only exists during coverture, and is only allowed to protect the woman from her

husband, and not to give her any disposition over the fee which she would not have at common law? And so it was considered that while personal property settled to the woman's separate use could be bequeathed by will, real property so settled could not be devised, except by virtue of a power of appointment, which was often given, and which made the case fall within the third exception already treated of. (*Harris* v. *Mott*, 14 Beav. 170; *Lechmere* v. *Brotheridge*, *supra*; and *Blatchford* v. *Woolley*, 2 Dr. & S. 206.)

And thus the law continued until 1865, when, by a masterly judgment in *Taylor* v. *Meads* (34 L. J., Ch. 203), Lord Westbury laid down a rule which has since never been questioned, that a married woman has full power of disposition by deed needing no acknowledgment, and by will, of all property settled to her separate use, be it realty or personalty, as if she were a *feme sole*. It is of course only the equitable fee in real property over which it was held she had this complete power, and the legal fee on her death, if there were no trustees, passed to the heir, who held the same as trustee for the devisee, and if trustees were interposed, they too held the same for the person nominated as devisee in the will. (*Suffall* v. *Waterhouse*, 6 L. R. 20.)

Knowing how much confusion exists on this power of a married woman to devise the equitable fee away from her heir, we are tempted to quote a few words from the judgment in *Taylor* v. *Meads*, which place the matter beyond doubt. "With respect to separate property," said the Lord Chancellor, "the *feme covert* is, by the form of trust, released and freed from the fetters and disability of coverture and invested with the rights and powers of a person who is *sui juris*. . . . The true theory of her alienation is that any instrument, be it deed or writing, when signed by her, operates as a direction to the trustees to convey or hold the estate according to the new trust created by such direction. This is sufficient to convey the *feme covert's* equitable interest, and when the trust thus created is clothed by the trustees with the legal estate, the alienation is complete both at law and in equity . . . I hold, therefore, that a *feme covert*, where not restrained from alienation, *has, as incident to her separate estate and without any express power, a complete right of alienation inter vivos* or by will."

The fact that the separate use property was held subject to a restraint on anticipation did not prevent its being given away by will, for the restraint only operated during coverture, and the will did not come into force until the coverture was at an end, and the controlling words used in Lord Westbury's judgment relating to this restraint must be taken to refer only to the power of disposition by deed.

It must be borne in mind in connection with the exception we are treating of that the power of disposition only applied to *separate use* property, and that such property has only existence *during coverture*, and, consequently, a will made by a woman during coverture was held not to apply to property to which the woman became entitled on her husband's death, for such property came to her as a *feme sole* and so was not separate estate; and in order that her will might operate on such property it was necessary that she in some way republish the will; and since the Wills Act it would be necessary that she re-execute the will, for the enactment in that Act that a will shall speak from the death does not extend the capacity of a married woman to make a will, at least not so as to make it include as separate property property which really never was separate estate. (*Willock* v. *Noble*, L. R., 7 H. of L. 580.) And this principle has been quite recently acted upon in construing the effect of the Married Women's Property Act, 1882, on a married woman's power of disposition in *Re Mrs. Price*, *Stafford* v. *Stafford*, a case to which we shall refer again by and by, and which, indeed, prompted us to write the present article. We must leave the other exceptions for a future Number.

(*To be continued.*)

HOW TO UNSEAT OUR MEMBER?

Many zealous and partisan supporters of unsuccessful candidates at the coming General Election will be debating this question. An answer to such an interrogatory necessitates a reference to one of the most complicated Acts that graces our statute book. The Corrupt and Illegal Practices Prevention Act, 1883, now regulates not only parliamentary but municipal elections, and its sections bristle with acts which are to be considered in future corrupt or illegal, and proof of commission of which will operate to avoid the election, and will, in some cases, also entail some very serious penalties. Although the statute has been in force some time, and some few municipal and parliamentary by-elections have been regulated by it, considerably more interest attaches to its complicated clauses now the General Election is close upon us; and some brief outline of the Act

will probably be interesting to all our readers. To render the task slightly easier we must divide our subject into three heads, each division treating of one particular class of offence.

Corrupt Practices.

Here the first point, of course, is: What acts constitute corrupt practices? The statute says that the term "corrupt practices" shall be deemed to include the following acts:

(1) Treating and undue influence; for the definitions of which we must refer our readers to sections 1 and 2 of the Act.

(2) Bribery and personation; for the definitions of which reference must again be had to Part III. of the Third Schedule of the Act.

(3) Aiding and abetting personation.

The next question which suggests itself: What is the result of the commission of a corrupt practice? To answer this it is necessary to draw attention to the fact that the result differs: a candidate may be guilty personally or by his agent, or the agent may have committed it, or some voter.

The Candidate.

A. Bribery, personation, or aiding and abetting such, committed *by him or with his knowledge and consent*, or treating or undue influence committed *by* him, render him

(1) Incapable of ever sitting for same constituency; and if already elected, election void.

(2) Subject, in addition, to same penalties and incapacities as on a conviction on indictment. These being

Treating, undue influence, or bribery,

(1) Misdemeanor: imprisonment not exceeding one year, with or without hard labour; or

(2) Fine not exceeding 200*l.*;

or guilty of Personation, or aiding and abetting,

Felony: imprisonment not exceeding two years, with hard labour.

And on conviction for any of the above corrupt practices further incapacity of

(a) Voting at any election;

(b) Holding any public or judicial appointment (if already held it must be vacated);

(c) Being elected for any constituency for seven years.

B. Any corrupt practice committed by his agent,

Incapacity from sitting for same constituency for seven years; if already elected, election void.

Any person, i.e. candidate, agent or voter, guilty of,

Treating, undue influence, or bribery,

(1) Misdemeanour: imprisonment not exceeding one year, with or without hard labour; or

(2) Fine not exceeding 200*l.*;

or guilty of Personation, or aiding and abetting,

Felony: imprisonment not exceeding two years, with hard labour.

And on conviction for any of the above corrupt practices further incapacity of

(1) Voting at any election;

(2) Holding any public or judicial office (if already held it must be vacated);

(3) Being elected for any constituency for seven years; if already elected, seat must be vacated.

Illegal Practices.

Here, again, the first question is: What acts are illegal practices? Section 7 answers the question.

(1) Payments made for conveying electors to poll.

(2) Payments for use of any house, land, &c. for placarding.

(3) Payments for committee rooms in excess of number allowed by the Act.

(4) Payments for election expenses in excess of maximum amount allowed by Act.

(5) The *election* agent getting prohibited persons to vote, or publishing false statements as to withdrawal of candidate.

(6) Paying expenses except through election agent.

(7) Paying claims barred by time under the Act.

(8) Failing to make return of expenses within time limited.

What consequences, then, ensue if an illegal practice is committed?

The Candidate.

If an illegal practice has been committed by him or with his knowledge—

(1) He cannot sit or be elected for seven years; if already elected, election void.

(2) Subject to penalties as on conviction on indictment. These being

(a) Fine not exceeding 100*l.*;

(b) Incapacity for five years from voting at any election within the constituency.

If an illegal practice has been committed by his agents without his knowledge—

Cannot be elected or sit for same constituency during that particular parliament, and if already elected, election void.

Any person, i. e., candidate, agent or voter, guilty of an illegal practice,

(1) Fine on summary conviction not exceeding 100*l.*

(2) Incapacity for five years from voting at any election within the constituency.

Illegal Payment, Hiring and Employment.

We now come to numerous minor offences; these are:

(1) Providing money for illegal practice or for an illegal payment.

(2) Letting, lending or employing hackney carriages or carriages and horses kept for hire.

(3) Corruptly inducing any candidate to withdraw.

(4) Payments for bands, cockades, flags, torches, &c.

(5) Employing persons in excess of number allowed.

(6) Publishing placards without the printer's name.

(7) Using as committee room (a) licensed premises; (b) any refreshment place; (c) public elementary school.

Now we find that the consequences which ensue on the commission of any of these acts are—

The Candidate.

Personally guilty renders himself liable to same penalties and disabilities as on commission of an illegal practice, viz.—

(1) Incapacity to sit or be elected for seven years; if already elected, election void.

(2) Subject to penalties as on conviction on indictment. These being

(a) Fine not more than 100*l.*;

(b) Incapacity for five years from voting at any election within the constituency.

An election agent personally guilty renders himself liable to same penalties and disabilities as on commission of an illegal practice, viz.—

(1) Fine on summary conviction not exceeding 100*l.*

(2) Incapacity for five years from voting at any election within the constituency.

Any other person on summary conviction to a fine not exceeding 100*l.*

From the above outline of the Act we trust that any so desiring may be enabled to see with comparative facility whether their particular member has in any way brought himself within this stringent statute. To have attempted to have gone further in detail in the present article would have been destructive to our object,—to place before our readers an epitome of the Act, from which they may gather a general idea of its provisions.

In our next Number we shall probably deal with the procedure on election petitions, of which it may be confidently expected a goodly number will be presented to the election judges early in December.

SATISFIED TERMS.

(*Concluded from p.* 247.)

Such, then, is an outline of the doctrine of the Attendance of Satisfied Terms, and the protection afforded by them. Previous to 1845 the existence of terms was so common, that there was an outstanding term connected with nearly every estate which came into the market. Now a purchaser could not neglect to have this term assigned to a trustee for himself even if he was inclined to leave it outstanding, and run the risk of there being a secret incumbrance on the property laid on it since the creation of the term; even if he was disposed not to avail himself of the protection of the term, he could not well dispense with an assignment of it. For if he did so, not only did he lose a certain measure of protection, but he ran considerable risk. For if he did not get in the term as a shield, it might be used against him as a weapon of attack. The term carried with it the right to possession, and as the legal estate was the only ground which would support an ejectment, it would happen that, if, for instance, a first mortgagee left it outstanding, he might be completely overreached by a second and subsequent mortgagee who obtained an assignment of the term without notice of the first mortgage.

The practice then was, on every purchase or mortgage, for the purchaser or mortgagee not only to take a conveyance of the premises, but also to have the assignment of any satisfied term which might be attendant on the inheritance made to a trustee for his benefit. It can easily be understood how greatly this practice increased the expense attending the transfer of land. To show how these expenses were swollen we subjoin two extracts from the evidence laid before the Real Property Commissioners. (See their First Report.)

"The frequent insecurity of titles in consequence of the suppression of deeds and incumbrances has rendered it necessary to keep on foot terms of years, and to have them assigned by distinct deeds to trustees in order that if any claim be made in respect of any secret conveyance, mortgage, settlement, or charge, the prior term or estate vested in the trustee may be set up as a protection against it. Such assignments are a material addition to the expense of the parties for whose benefit they are made, as well as to the length of abstracts."

"Great trouble and expense are frequently necessary in order to prove and deduce a title to a term on account of many intricate questions of

law relating to the merger of them, and the construction of instruments by which they may have passed, and the numerous questions of fact respecting the ownership of trustees and executors. Indeed it may be questioned whether the heavy expenses occasioned by assignments of terms in adding to the length of abstracts and evidence to prove them, and requiring upon every alienation, in addition to the conveyance, another deed for assigning the terms, do not greatly overbalance the advantages which they afford."

And even when a purchaser had at perhaps great expense obtained the assignment of a term, the protection obtained was, in the words of the commissioners, always "precarious and frequently inadequate." The purchaser could not be certain that the term assigned to him was the only or the oldest term, or that it had not been previously transferred by a deed concealed from him. Then there were further dangers. There was the danger that the term might, though having apparently a separate existence, have been destroyed by merger. Then the protection afforded was rendered uncertain by the rules of equity respecting notice, especially those as to constructive notice. Again, there was the doctrine of the presumption of the surrender of satisfied terms; for courts of law in several cases supported the presumption of the surrender of a satisfied term, even after it had been assigned to attend the inheritance. (See *Lade* v. *Holford*, 3 Burr. 1416; *Doe* v. *Plowman*, 2 B. & A. 573.) In fact, it was said that a term which had not been recently assigned could not be relied on as a protection against incumbrance, and that a term was to be secured, rather for fear that it should fall into adverse hands, than from any positive benefit to be derived from it. (See 9 Bythewood and Jarman, 3rd ed., 109.) Mr. Sidebottom, in his evidence before the commissioners, thus summed up the objections to assignments of terms as a protection:—

"I will recapitulate the reasons for not placing any implicit reliance on outstanding terms of years as a protection. First, the general doctrine of notice, and more particularly constructive notice; secondly, the cases in which it has been decided that, though a term has been assigned to attend the inheritance, a surrender of that term may be presumed; thirdly, the possibility, an outstanding term being got in, of there being an older term which may be got in by some other person, and which may give him a priority to that assignment which has been procured; fourthly, that a term so assigned is no protection against a crown debt, whether there be or be not notice; fifthly, the difficulty, if I have procured the protection of a term without notice, of satisfying a future purchaser who has notice that I had no such notice; and lastly, that in many cases, more particularly with respect to old terms, which afford the best protection, it is impossible to prove (if I want to make use of that term as a protection) that any or which of the parcels included in the conveyance to me of the fee simple are included in the term which I rely on as my protection."

This state of the law obviously called for the interference of legislation, and the Real Property Commissioners of 1845 having advised that it would be well to dispense with the assignment of outstanding satisfied terms altogether in all future dealings with land, the statute 8 & 9 Vict. c. 112, was passed. This statute provides (sect. 1), "that every *satisfied* term of years which either by express declaration, or by construction of law, shall upon the 31st of December, 1845, be attendant upon the inheritance or reversion of any lands, shall on that day absolutely cease and determine as to the land upon the inheritance or reversion whereof such term shall be attendant as aforesaid, *except* that every such term of years which shall be so attendant as aforesaid *by express declaration*, although hereby made to cease and determine, shall afford to every person the same *protection* against every incumbrance, charge, estate, right, action, suit, claim and demand as it would have afforded to him if it had continued to subsist, but had not been assigned or dealt with, after the said 31st day of December, 1845, and shall *for the purpose of such protection* be considered in every court of law and equity to be a subsisting term;" and (sect. 2) "that every term of years now subsisting, or hereafter to be created, *becoming satisfied after* the said 31st day of December, 1845, and which either by express declaration or by construction of law shall after that day become attendant upon the inheritance or reversion of any lands, shall, *immediately upon the same becoming so attendant, absolutely cease and determine* as to the land upon the inheritance or reversion whereof such term shall become attendant as aforesaid."

It will be seen that the Act divides satisfied attendant terms into two classes—(i) Terms which were satisfied on or before 31st December, 1845; and (ii) Terms which have become satisfied since that day. Taking the latter first, as being the

simpler case, we find that all terms which become satisfied *after* the 31st December, 1845, and which become attendant, will at once cease, so that they cannot in future be made use of as a means of protection by a purchaser or mortgagee.

Then, as to terms which became satisfied before the 1st January, 1846, and which are attendant upon the inheritance, these, too, will cease. But there is the important exception that such terms, if attendant by express declaration, though the Act makes them also to cease and determine, will continue to afford every person the same protection against incumbrances as they would have done had they been allowed to remain in existence, but had not been assigned or dealt with after the 31st December, 1845, and they will still be considered as subsisting for the purposes of such protection. It will be observed from this, that there will be no protection obtained by getting in, since the 31st December, 1845, a term satisfied on or before that date. For such term is at an end and will only protect persons in trust for whom it has been assigned *before* that day. If the term will not benefit a person without a new assignment of it to him, he does not come within the operation of the saving clause, as was said in *Shaw* v. *Johnson* (1 D. & S. 412). The intention of the Act was that "all mere dry satisfied terms should merge, but not terms assigned or agreed to be assigned as a protection to a mortgagee or a purchaser." The saving clause is only meant to protect those persons who have taken an assignment of the term before the 1st January, 1846. It has been held that the proper way of testing the right of a person to the protection of a term coming within the exception is to consider whether, if the Act had not been passed, equity would have restrained him from setting up the term. If the term was on the 31st December, 1845, attendant by express declaration, and would, if subsisting, have afforded such protection against an incumbrance as the Court would not restrain him from setting up in a court of law, then it will come within the exception, and will be considered as an existing term, and give him protection against the incumbrance. (*Cottrell* v. *Hughes*, 15 C. B. 532.) Further, it has been held, that a term does not become satisfied within the Act except the beneficial interest in the whole charge secured by the term, and the beneficial interest in the whole estate, are united and merged in one person. (*Anderson* v. *Pignett*, L. R., 8 Ch. 189. See also generally on the Act, *Doe* d. *Clay* v. *Jones*, 13 Q. B. 774; *Shaw* v. *Johnson*, 1 D. & S. 412; *Doe* d. *Jacobs* v. *Phillips*, 10 Q. B. 130; and *Doe* d. *Cadwaller* v. *Price*, 16 M. & W. 630, 609.)

DIVORCE RULES, AUGUST, 1885.

The following Rules under the hand of Mr. Justice Hannen, and dated the 4th day of August, 1885, came into operation on the 12th August last:—

"62. An application for a new trial of the issues of fact tried by a jury or for a re-hearing of a cause shall hereafter be made to a divisional court of the Probate, Divorce, and Admiralty Division, and shall be by notice of motion filed in the Registry, stating the grounds of the application, and whether all or part only of the verdict, or findings, or decree is complained of, and such notice of motion shall be filed and served upon the other parties in the cause, or their solicitors, within eight days after the trial or hearing, and the motion shall be made eight days after service of the notice of motion, if a divisional court be then sitting, or otherwise on the first day appointed for a sitting of the divisional court after the expiration of the eight days, and the time of the vacations shall not be reckoned in the computation of time for serving such notice of motion.

"62a. The notice of motion may be amended at any time by leave of the Court or a judge upon such terms as the Court or judge may think fit."

[This rule takes the place of the former Divorce Rule, No. 62 (now repealed). Under the former rule, the application for a new trial had to be made by motion within fourteen days of the trial; and it was held in *Ahier* v. *Ahier* (4 Law Notes, p. 124), that this time for applying was in no way affected by the Judicature Practice, though it was doubted in *Saunders* v. *Saunders* (4 Law Notes, p. 125), whether under the Judicature Practice it was not necessary to give notice of a motion for a new trial of a divorce cause. In future, applications for a new trial in the Divorce Division are assimilated to the practice applicable in the Queen's Bench Division, and the decision in *Ahier* v. *Ahier* is reversed, and the doubt raised in *Saunders* v. *Saunders* settled.]

By Rules 127 and 128 it is provided, with regard to changing the solicitor on the record in a proceeding in the Divorce Court, that

"Any party to a cause shall be at liberty to change his or her solicitor without an order for that purpose upon notice of such change, contain-

ing an address for service of pleadings and other instruments within three miles of the General Post Office, being filed in the registry, but until such notice is filed and a copy thereof served on the other parties in the cause the former solicitor shall be considered the solicitor of the party."

[These rules take the place of the old rules Nos. 127 and 128 (which are repealed), under which an order of the Court was necessary to effect a change of solicitors on the record, and special provision was contained whereby the cause could proceed by the new solicitor without previous payment of the former solicitor's costs in case the latter neglected to file his bill of costs for taxation within the time allowed by the order authorizing the change. The new rule assimilates the divorce practice to the practice now prevailing under Order VII. rule 3, in the other divisions with regard to the method by which a change of solicitors is obtained.]

By Rules 139 and 140 the following provisions with regard to affidavits are made.

"139. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the above-named deponents.

"140. No affidavit having, in the jurat or body thereof, any interlineation, alteration, or erasure shall, without leave of the Court or of one of the registrars, be filed or made use of in any matrimonial cause or matter unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit, to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it."

[These rules take the place of the old Divorce Rules, Nos. 139 and 140, which are repealed. Under these repealed rules, the names of each deponent had always to appear in the jurat, and unless alterations and interlineations were duly authenticated by the initials of the examiners, &c., the affidavit could not be admitted, there being no provision, as in the new rule, enabling the Court or registrar to give leave for its admission. Further, the repealed rule as to erasure was the same as that which regulated interlineations and alterations; but the new rule, it will be observed, is more stringent with regard to erasures being verified than it is as to interlineations, &c. Here, again, the divorce practice is assimilated to the practice which prevails in the other divisions under Ord. XXXVIII., rr. 9, 12.]

To settle certain doubts which have arisen as to the method by which applications to the Divorce Court under the Matrimonial Causes Act, 1884, have to be made, and as to the applicability of the Divorce Rules to applications made under that Act, Rules 214 and 215 provide as follows:—

"214. All applications to the Court to exercise the authority given by sects. 2, 3 and 6 of the Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), are to be made in a petition, which may be filed as soon as by the said statute such applications can be made, or at any time thereafter.

"215. Rules 97 to 102, both inclusive, of the Rules and Regulations for this Court, bearing date 26th December, 1865, and Rule 195 of the Additional Rules, bearing date 14th July, 1875, and Rule 204 of the Additional Rules, bearing date 17th April, 1877, shall, so far as the same are applicable, be observed in respect to applications by petition to exercise the authority given by sects. 2, 3 and 6 of the Matrimonial Causes Act, 1884."

The rules should be entered in the proper places in the student's text-books on Divorce, and in Gibson & McLean's Student's Practice, Part V., 2nd ed. In the third edition, just published, these rules are duly incorporated.

DISTRINGAS.

Rules of July 1885.

"Any person who, under Order XLVI. of the Rules of the Supreme Court, 1880, served in the manner thereby prescribed a notice, operating in lieu of a writ of distringas, which on 27th July, 1885, was still in force, may at any time during the currency thereof file in the Central Office, without any affidavit in support thereof, a further notice under his hand, stating that the same shall thenceforth have effect without any further renewal, in the same manner as if it had been a notice filed in the Central Office on affidavit under Order XLVI. rules 4 and 5 of the Rules of the Supreme Court, 1883, and serve a duplicate of such notice under the seal of the Central Office

upon the company upon which such first-mentioned notice was served; and the service of the duplicate of such notice so filed shall have the same effect as a writ of distringas duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England.

"This rule may be cited as Order XLVI. rule 14."

[Under the Rules of April, 1880, it was necessary to renew distringas notices every five years by giving a notice of renewal. The Rules of 1880 are repealed by the Rules of 1883; but the repeal did not affect anything which had been done under the repealed rules. With regard to a distringas notice lodged on or after the 24th Oct. 1883 (*i. e.*, lodged under the Rules of 1883), no renewal is required. But with regard to a distringas notice which had been lodged between the 6th April, 1880 (when the Rules of 1880 came into operation), and the 24th October, 1883 (when the Rules of 1883 came into force), renewal of it was required every five years by the Rules of April, 1880. To prevent the necessity of this renewal, and to place distringas notices lodged before 24th October, 1883, on much the same footing as those lodged on or after that date, was the object of the above rule.]

NOTES ON THE FINAL.

We commend to the notice of students for the November Examination the recent statutes and rules which we epitomise this month.

The last day for giving ordinary notice for the November Final has passed, and notice can only now be given on obtaining an order from a judge. Renewed notices may, however, still be given, the last day for giving them being Monday, October 19th.

We give below some questions which are constantly being put to us, with answers thereto. We shall continue this from time to time.

Must I take up Bankruptcy for my Final?

You are not obliged to do so, as it is not an essential subject.

Does any good come from taking it up?

We think a great deal of good; for, in the first place, bankruptcy has a most material bearing on the essential subjects, and a knowledge of it will most likely assist you in the papers on these subjects; secondly, we believe—and we have good grounds for the belief—that a good Bankruptcy Paper will make up for a weak—but not too weak—paper in one of the essential subjects; and thirdly,—and this is the greatest reason of all—when you are admitted a solicitor, you can hardly advise your clients properly without a knowledge of at least the leading principles of bankruptcy.

Ought Bankruptcy to be an essential subject?

For the reasons above stated, we think that it is the duty of the Law Society to make bankruptcy an essential subject; and that the sooner this is done the better. It is the Society's duty to see that every candidate who secures his Final Certificate is capable of properly conducting the practice of a solicitor; and, for our part, we do not see how they can certify this in favour of a man who knows nothing of bankruptcy. Matters of every-day occurrence in a solicitor's office, such as bills of sale, voluntary settlements, settling with creditors, mortgages of leaseholds, dealings with persons who have been through the Bankruptcy Court, &c., require an intimate knowledge of bankruptcy law to enable the solicitor engaged to do his duty and advise his client properly.

Will Bankruptcy be made an essential subject?

Of this we have no manner of doubt, but *when* is another matter. The improvements effected by the Law Society are tardy but they are sure, and in the short time the "Law Notes" have been running, not yet four years, we have had the pleasure of drawing attention to a great many improvements made respecting the Examinations, most of which were very strongly and very persistently urged in our columns, and we believe it will be the same with Bankruptcy.

Can I pass my Final in November and try for Honors in January?

This is what a good many would like to do, but it is not permitted. Anyone seeking Honors must present himself on the Friday of the week in which he presented himself for Pass purposes.

Can I go up for my Final before my articles expire?

Yes; as a rule, candidates are allowed to go up for the Examination immediately preceding the expiration of their articles.

Does service between the death of my principal and my transfer to another principal count in my service of five years?

It does not, and so it is necessary to enter into fresh articles at once.

Is it necessary to read case law for the Final?

It is not necessary, but it is very desirable that you know the leading cases and the recent cases of importance.

NOTES ON THE INTERMEDIATE.

Now that the subjects for 1886 are announced, we would urge those of our readers who intend to present themselves for the Intermediate next year to start diligent work at once. That dangerous plan of procrastination—leaving for to-morrow to-day's work—is what causes so many Intermediate students to fail in satisfying the examiners. Ten months' steady regular work, followed by two months' hard reading, is what we recommend as the proper course of work to meet the Intermediate as it is at present conducted.

Monday next (the 5th October) is the last day for giving ordinary notice for the next examination to be held on November 5th. Renewed notices may be given on or before Wednesday, October 21st.

We do not know what will be the outcome of the resolutions of the Law Students' Congress in favour of honorary distinction at the Intermediate. We cannot help feeling that such a resolution comes a little too quickly upon the top of the petition for the same object which was laid before the Law Society, duly considered by the Society, and refused. After this petition and refusal, the matter, in our opinion, ought to have been allowed to sleep, since a different result on a further consideration by the Society can hardly, at so early a date, be expected.

We are often asked the question "Shall I read this, that and the other work in addition to reading Stephen's Commentaries and the Guide thereto, for the purpose of passing my Intermediate Examination?"

Our invariable answer is that, as the Examination questions are only set on the Commentaries, the student must first *master* the Commentaries, and then, but not before, he can read what other suitable law book he likes. And, as in 99 cases out of 100, it will take the student, who properly attends to his office duties, all the time at his disposal to get up the Commentaries, practically our advice to the Intermediate student is, that he confine himself to the text book selected for his Examination.

"MEMS. ON STEPHEN."

(*Continued.*)

Occupancy—Of what it consists.

It is the taking possession of those things which belong to nobody, and constitutes the true ground and foundation of all property.

When a Title by Occupancy occurs.

Formerly if A., tenant for life of lands, granted them to B. (simply and not to B. and his heirs), and it chanced that B. died in A.'s life, the first person who entered on the lands after B.'s death was entitled to hold them until A. died, and the person so entering was called the "common occupant."

No Common Occupancy at the present time.

The doctrine of common occupancy being found inconvenient, it causing, it was said, the scrambling after lands, the Statute of Frauds abolished it by providing that the lands should pass under the will of (in the case above supposed) B., and if he made no will the lands should go to the executor or administrator for payment of B.'s debts, and thus "common occupancy" was abolished.

Special Occupancy may still occur.

If, in the case supposed, the lands had been granted to B. *and his heirs*, then on B.'s death the heir entered as "special occupant;" and he is still entitled to so enter as against the executor or administrator, though he has no claim against the devisee under B.'s will. It follows that a "special occupancy" arises where a tenant who holds lands to himself and his heirs during the life of another dies intestate as to the lands; and this seems to be the only case in which, by the laws of England, a title by occupancy can arise.

What is a Quasi-Entail?

This arises when an estate *pur autre vie* is granted to a person and the heirs of his body. Thus, if A., tenant for life, grants his life estate to B. and the heirs of his body, B. acquires a quasi-entail, that is to say, an estate which will during A.'s life descend only to B.'s lineal descendants, and revert to A. should B. die in his lifetime without issue, unless, indeed, B. had barred the entail.

How a Quasi-Entail is barred.

By any method of alienation *inter vivos*, but not by will. That is to say, B. in the above case could bar the rights of his issue, and also of any remainder limited on his life estate, by a simple ordinary deed, not requiring any enrolment under 3 & 4 Will. 4, c. 74.

The effect of the Sea receding.

If the sea gradually recedes, the land over which it formerly washed is as gradually transferred to the owners of the lands adjoining, who acquire a title by *dereliction*, for *de minimis non curat lex*. But if the sea makes a sudden dereliction, no title is conferred on the adjoining owners, but the land left dry belongs to the Crown.

The effect of the Sea encroaching.

If the encroachment is gradual, the land on which the sea gains is gradually transferred to the Crown, and the title acquired is that of *alluvion*. But if the encroachment is sudden, the person on whose land the inundation takes place is not deprived of his property therein.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements expressed or made.*]

Answers to Correspondents.

SHIP CANAL.—Most certainly not.

SUBSCRIBER.—A. B.'s ten years' service would, in accordance with the decision in *Re James* (4 Law Notes, p. 178), only start from the time he entered the second office; and so he cannot yet have served ten years.

F. TAYLOR.—We think so; the mortgage was made in accordance with the formalities of 3 & 4 Will. 4, c. 74.

LEWIS MAY.—Butlin's Introduction would be a serviceable book; but we should advise "Stephen."

EASTGATE.—Not till November, 1886.

BATH.—A solicitor who is admitted, but has not taken out a certificate, has no strict right of audience in a County Court; but, by permission of the judge, if he is a managing clerk to a practising solicitor, he is in most Courts allowed to appear.

A. B. PILLING.—Thanks. We will stir up our Contributor, and try and get him to give us some more Practice Articles.

C. S. BRADLEY.—Yes; the list should suffice.

J. WHITMORE.—Thanks for your suggestion; but we fear it is hardly possible to comply with it, as the books you refer to are not sufficiently generally possessed; but we will consider the matter.

LEX (Sheffield).—1. Yes. 2. Yes, if you have the 5th edition of the Guide.

D. W. T.—We are sorry that we cannot recommend any book.

K. K. K.—We are not well up in "notary public" law, and would advise you to apply to some leading notary public; but, in reply, we think (1) This could not be done. (2) This could be done. (3) Articles must be served.

J. L. S.—Yes; in June, 1887.

A. E. GUY PRITCHARD.—What you ask is outside our correspondence columns. If you send a list we will tell you if it will do.

H. PERKINS.—You only need know the *old* law, but it would be well to get up the epitome of the Act of 1883 in "Law Notes" for October, 1883. The fifth edition of the Guide includes all recent Acts up to the end of 1884.

T. R.—The statement was quite correct, a second cousin *is* the grandchild of a great uncle. (See Table in Vol. II. of Stephen, 9th ed. p. 195.)

SIGMA.—Certainly, as the Guide gives you all the statutes which are incorporated in the later edition of the text.

W. W. WHARTON.—(1) As something upon which to sue in a common law Court. (2) A search should never be omitted; the requisition you refer to need not be answered (*Ford* v. *Hill*), and it does not extend to incumbrances which the purchaser can discover by searching. A solicitor by not searching runs a considerable risk.

J. A.—We are sorry to say that we cannot assist.

H. B.—We hope to answer your query next month.

LEX (Kirton-in-Lindsey).—We do not think this point has ever been decided, but we will search and answer your query again next month.

ALPHA.—He can do so out of the instalments he has to pay, but only upon so much of the repayments as represent interest on the loan. (See *Re Middlesborough Building Society*, Law Times, 1885, p. 293.)

H. L. S. RICHARDSON.—You must write to Mr. Williamson, and get leave to present yourself in January.

A. G.—Certainly he can act.

LAW STUDENTS' DEBATING SOCIETIES.

PRESTON LAW STUDENTS' SOCIETY.

The twenty-first general meeting of the present session of this Society was held at the Law Library Chapel Walks, on Friday evening, September 4th, when the chair was occupied by Michael Willan, Esq., Solicitor. After some general business had been transacted and several legal queries satisfactorily settled, the following case was argued:—"A. and B. are executors and also creditors of C. B. does not join in proving the will. Can A. pay his own debt out of C.'s assets to the prejudice of B.?" Messrs. Rawsthorn, Cartwright, Parkinson, R. A. McNab, Smith and Bush all argued in favour of the affirmative, whilst the negative contention was supported by Messrs. Preston, Bell and T. B. Ladyman. After the openers had replied the chairman summed up the arguments, and put the question to the meeting, when the voting was equal: upon which the chairman gave his casting vote in favour of the negative. A vote of thanks to Mr. Willan for his kindness in presiding closed the meeting.

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Law Notes.

Edited by ALBERT GIBSON.

Vol. IV. November, 1885. Part 11.

SOME NOTES.

THE most important legal event during the past month has been the President's address to the Law Society at Liverpool. In another column will be found an article, "Solicitors as Reformers;" but that article simply discusses one point in the address. There are many other points of interest in it. A natural lament that the Society is not better supported, that so many members obstinately refuse to join its ranks, of course is to be found in every President's address. In connection with this subject Mr. J. P. Rubenstein read an interesting paper. In England and Wales there are, it appears, 13,500 solicitors, and only 4,000 are members. After 60 years' life of the Society that so small a number only are members points to some serious defects. What are those defects? We should, says Mr. Rubenstein, have the right to place after our names distinctive letters in the same way as architects, civil engineers, &c.; we need more opportunity for social intercourse, the Law Club, with its entrance fee and subscription, is too exclusive; a better choice of time for our meetings, and better representation in the legal press. We are not so sanguine as Mr. Rubenstein as to the efficacy of these proposals. We know one alteration which would recruit the Society, and, we believe, the only thing. Let the Society get an Act for the remission of the "Iniquitous Tax" in the case of all members of the Society. We fancy then we should have most of those 9,500 solicitors.

That, by the way, strikes us as a serious omission in the President's address. Not a word about the "Iniquitous Tax." We are perfectly aware that the most recent utterance of the Chancellor of the Exchequer was unfavourable to any hope of its remission. But the bulk of the profession desire the remission of this tax; members of the Council of the Law Society are, no doubt, rich enough to be perfectly indifferent to it, hence their apathy; but this is not the way to induce new men to join. This very apathy on the part of the Society as to questions in which the younger generation takes a vital interest is the reason—the great reason—that members abstain from joining. In an address of such vigour it is a thousand pities there was no strong denunciation of this vile impost.

The President regrets, as do all who desire the improvement of the laws, the abortive attempt to pass an Infants' Custody Bill last session. This portion of the law at the present time urgently needs revision. While not proposing to take away the father's right, it is quite evident that the time has arrived when the mother must be allowed a proper share in the control and custody of her children. Copyhold tenure, he considers, must speedily go by the board; as its area diminishes it becomes more necessary to accelerate its extinction; the Act introduced last session was refused by the Lords because, no doubt, "it dealt too uncompromisingly with the rights of the lords of manors." Here, at any rate, no one can charge solicitors with impeding this legislation. The President appears to think that as the men of Kent were doughty enough to retain their gavelkind tenure in spite of William the Conqueror, they will probably continue to do so in spite of all reformers, for he anticipates trouble in getting rid of this tenure.

The Duke of Marlborough has recently written to the "Times" letters so extremely virulent and antagonistic to lawyers that it is only human to note with pleasure the deftly-pointed sarcasm in the address in connection with the Duke of Marlborough's proposal for registration of titles. "Where both Lord Westbury and Lord Cairns have signally failed, the Duke of Marlborough and those who work with him are hardly likely to succeed." Hardly!

The recent efforts at "leasehold enfranchisement," our President stigmatizes as "two crude and ill-considered bills." We consider this criticism somewhat too severe: the bills could scarcely be called "crude." But, not content with this, he was even more severe, for he stigmatized them as "unjust." That there are evils attendant on the practice of long building leases he admits, but while dismissing the attempts to cure these evils we fail to find in his speech the slightest hint or suggestion of any other remedy.

In his remarks on trustees' duties, and the recent decisions affecting them, we must congratulate the President on having, if such a word is permissible, "cornered" Lord Justice Baggallay. In *Dunn* v. *Flood*, which we have already commented on, his Lordship remarked "that it is incident to the position of trustees that they are surrounded by pitfalls to which ordinary persons are not exposed." Now, as the President observed, "those are remarkable words for a judge to use, both for their truth and for their candour, for who dug those pitfalls?" The answer is obvious: Lord Justice Baggallay and his brethren. The solicitors are now earnestly engaged in rendering the position of trustees less hazardous. They advocated and improved on Mr. Ince's bill for the Relief

of Trustees, but it failed last session to become law, and "we wait for a favourable opportunity for its re-introduction."

A paper was read on Land Law Reform by Mr. J. Hunter, who formulated his reforms in ten distinct heads. They are to us both novel and daring; we have not yet heard from any Radical platform any such plain and revolutionary proposals; moreover, they have the appearance of being the result of careful thought by a legally trained mind; very different from the platform platitutes of politicians which begin and end with abolition of primogeniture. The following are some of the more important of Mr. Hunter's proposals. No future estates in land, except fee simples and terms of years; legal estates to vest in executors on death; Crown duties not to prevail against a purchaser; no rent-charges to bind lands unless registered; time for bringing actions in all cases to be cut down to six years; the Statute of Elizabeth to be repealed, and gifts of realty to stand in the same position as gifts of personalty, liable only to be upset under the bankruptcy laws.

Mr. T. G. Lee, of Birmingham, undertook a task worthy of Hercules: to answer and criticise the recent pamphlet of the Free Land League, which has been extensively circulated. His conclusions are that the first five of the objects of the League are neither "dangerous, socialistic, nor subversive of just rights," but that the last four would produce nothing short of a social revolution. Land enthusiasts and agitators, who want a patent recipe for producing social revolutions to order, had better write to the League for a pamphlet; we cannot discuss them in these pages.

A paper on Leasehold Enfranchisement was read by Mr. G. Layton of Liverpool: we were pleased to note that the speaker advocated strongly reforms similar to those we have frequently advocated in these columns: he quoted largely from the Report as to Foreign Systems—the report on which we some time since based an article entitled "Foreign Tenures." We trust, we must almost think indeed, that Mr. Layton must have read that article: particularly severe was he in his strictures on building leases, and "landowners" he stigmatized as greater monopolists than gas or water companies.

An interesting paper was read on the "Unity of the Profession." Only imagine the profession dwelling together in peace and unity! Why, it is contrary to all our ideas of a lawyer: one who quarrels, argues, and discusses, how can he dwell in unity with another lawyer? The paper dealt, however, with the old subject, the insufficient support accorded to the society, and, it struck us, contains a veiled hint that local societies have a good deal to answer for in scattering love and affection, which should be reserved for the chief society.

In conclusion, we scarcely remember a more important meeting nor a better address. The speeches made, and the papers read, indicate energy, determination, appreciation of the signs of time, and a desire to march with, nay, almost to lead public opinion on all the reforms which now impend. We must confess to extreme astonishment and pleasure at finding the "old Society," as familiarly styled, waking up to its position; we should say this last meeting will do much to recruit its ranks; those at present outside will feel impelled to give it their support.

We do not think much of the remedy suggested at the Liverpool meeting for that crying evil—the absence at the trial of counsel who have been retained in the case, viz. that the solicitor upon the record shall, in the absence of his counsel, as of right be entitled, if he elects to do so, to conduct the cause of his client. If the counsel is paid for his work, let him do it, we say. Why should the burden be cast upon the solicitor at the last moment? Unless he spent the time in getting up the case before the trial—for the doing of which counsel has been paid—he could not possibly do justice to his client's case; and if the solicitor's time is to be taken up in doing counsel's work, who is to do the solicitor's work—that heavy and responsible work which falls on his shoulders in getting the case ripe for hearing? No, this remedy will not do: more drastic measures are necessary. Contracts with counsel must be put on the same footing as other contracts. Counsel must be made responsible for breach of contract; and in return, of course, have the right to sue for their fees. If the bar object, if they think that it does not become their dignity to contract for remuneration, if they do not care to run the risk of an action for breach of contract, then some other step must be taken more drastic still. Clients cannot go on feeing counsel, only to find that at the trial they do not attend to earn their fee, and that their cases are left practically to take care of themselves, or to the junior counsel employed. We know that many counsel return the fees if they cannot attend; but this is by no means so universal a practice as it ought to be, and moreover it does not prevent the client being left without the counsel he has relied upon, and who knows, or ought to know, the ins-and-outs of his case. A client naturally blames his solicitor for the fact that his case was not properly conducted, and, as a body, solicitors must take some steps to prevent the omissions of

others being cast upon their shoulders, and to protect their clients' interests. We shall join heart and hand in any movement which has for its object reform in this matter; and if in the result it is found necessary to take some step seriously detrimental to the bar, the leading members of the bar will have no one else to blame but themselves. Other persons have to answer in damages if they take up so much work that some of it is neglected, and why not barristers? And this is after all the root of the evil. One man cannot be attending to half-a-dozen cases at a time.

The "Solicitors' Journal," in an article entitled "The Animus Manendi in Relation to Domicil," does not see its way to approve the decision of Chitty, J., in *Re Patience, Patience* v. *Main*, to which we referred *ante*, p. 124, and which is now reported in L. R., 29 Ch. D. 976, and 33 W. R. 500. In this case it will be remembered that Colonel Patience, though born in Scotland, had never visited that country from the year 1810 until his death in 1882, and that during the last 22 years of his life he had resided in different parts of England, living sometimes in lodgings, sometimes in hotels, and sometimes in boarding houses; and Chitty, J., held that his domicil was still Scotch. The reason of this decision appears to have been that, although the deceased had for so long before his death been resident in England, yet his moving from place to place showed a "fluctuating and unsettled mind," and that such residence, standing alone, was not sufficient for the judge to hold that the deceased intended to make England his home. Our contemporary asks, and with much show of reason, whether, if this is to be the law, will it not prevent the acquisition of domicil by persons living in lodgings or furnished houses? and further, why should the application be confined to persons in lodgings or furnished houses? Our contemporary considers that it applies equally to persons who move about in England taking unfurnished lodgings. Mr. Justice Chitty, when arriving at his decision, hardly foresaw the results thereof, and we trust that the matter will be brought before the Court of Appeal.

We have once more—we wish it might be the last time that there will be any necessity for the reminder—to remind our readers that solicitors' certificates to practise must be renewed on or before the 15th December. Now that the elections are at hand is the time to bring this abominable tax to the notice of candidates for the next Parliament, and solicitors should one and all refuse to assist in any way a candidate who does not pledge himself to take part in the necessary steps for its abolition. Why should solicitors be compelled to pay an additional income tax? There is no sort of reason why they should, and the long sufferance and forbearance which, as a body, we have shown in the matter must come to an end. With income tax at the present fabulous rate, and with diminishing incomes and overcrowded ranks, we can no longer afford to pay the extra annual exaction of 9*l.* or 6*l.*, as the case may be. If any one reform is needed more than another it is with regard to this unjust tax, and yet not one word is to be found in any of the numerous political speeches which are being made throughout the country!

Truly, people do marry under most remarkable circumstances: it is, however, fairly open to question whether a more curious marriage arrangement than that disclosed before Mr. Paget the other day, has ever been unearthed. A woman applied to know if her marriage contracted under the following circumstances was legal:—In 1881 she was married at a registrar's office, the understanding being that her husband was to go abroad and return in two years. He stayed in England some months before going away, but she did not cohabit with him. Finally he went and had not as yet returned. She had received a letter from him only three weeks before in reply to a letter asking him to return, stating that he could not do so. Now she wanted to know whether her marriage was a legal one, not because she desired to marry anyone just then, but she might do so some future time. Truly, as the magistrate said, she had been very imprudent, and he could not assist. What could have induced a woman to enter into such a curious marriage contract?

The man who, in one short day, attempts to pick the pockets of two detectives, may reasonably be excused for cursing his hard luck. A Russian was the other day charged at one of the police courts with this offence. The detective sergeant stated in evidence that from the way the man went to work on his brother officer and himself it was obvious he was an amateur. Quite obvious, we should say; it requiros but very slight experience to detect the plain-clothes constable and his almost as obvious brother officer the detective.

We shall be very careful in future in dispensing coppers to one-armed shoeless decrepit beggars. A man was charged the other day before Mr. Hosack with begging. The strongest possible evidence was forthcoming that the man was an impostor; for when the policeman took him into custody, the missing arm was produced and used in an endeavour to escape: at the police station also boots were found secreted on his person. We reserve our spare coppers in future for *bonâ fide* one-legged men; we suppose it is not possible to hide a whole leg.

Bakers are having rather a hard time of it just now. Prosecuted for not sending with their carts scales for weighing as required by statute, they are

now prosecuted and fined for not weighing loaves before delivering them to customers over the counter. This a baker at Notting Hill declined to do when so desired; and for this he was summoned and fined 40*s.*, and 2*s.* costs. The loaves were found to be 5 ozs. short of 4 lbs., the proper weight for two half-quartern loaves. Mr. Paget said, the fact that the defendant did not profess to sell bread by weight made no difference; if he sold by loaf the loaf must, nevertheless, be the proper weight. When will tradespeople realize that they must sell what they profess to sell? A half-quartern loaf means a loaf weighing 2 lbs.

We must confess to a not unmitigated admiration for Revising Barristers and their ways. Can anyone tell us off-hand what is the result of the various decisions given by them on the points which have cropped up in connection with the service vote? Have all soldiers got a vote? Have resident school-masters, when the head master resides in the house? Do the decisions agree as to undergraduates at the different colleges? And, lastly, what is the position of the numerous shop employés who live on the premises? Can the shop-owner simply enfranchise or disfranchise them by having a bedroom of his own on the premises? Could any useful purpose be served by answering at the present time these various points, we would of course depute "special correspondents" from our numerous staff to investigate and report and write articles. We deem it better to wait till the decisions of the Divisional Courts, and these unfortunately will be given immediately after we have gone to press.

This, by the way, reminds us of a grievance. Why do our worthy legislators persist in statutes in using words the meaning of which they know, or should know, has caused the Courts great embarrassment? The word "dwelling-house," used in the Representation of the People Act, 1884, has always been a stumbling-block for judges in all other statutes. Of course it would be grossly unjust to hint that the use of ambiguous words, words that are known to be ambiguous from the trouble they have caused in other statutes, is not altogether quite unintentional. Barristers draft these statutes, barristers are appointed revising barristers; they, no doubt, will have always ample work to do: still it is no doubt just as well to keep them well employed that the public may realize the importance of the office. Far be it from us to even hint at this as a reason: still why did they use "dwelling-house" when a reference to the Digest of Cases would have shown them the trouble they were making?

By the time our next Number appears the important point will have been decided — Are Conservatives, Tories, Whigs or Radicals to be our future rulers? We endeavour to steer clear of political questions, believing that it is no part of the duty of a legal journal to show political leanings. We believe in, and are strong supporters of, a wise and consistent reform in the laws; that may be moulded in accordance with the spirit of the age. The tendency is to progress—whether that progress is for good or evil is the disputed point; but it behoves lawyers to see that the laws are not left behind, so that they become mere antiquated saws and maxims. We feel that in advocating reform in these columns our readers must sometimes attribute to us opinions of an advanced character. We take the opportunity to disclaim any opinions at all except those of a legal nature. So long as the necessary reforms in law are made, we care not by which party. As necessary reforms we would exemplify an amendment in the law of criminal evidence, which closes at present the prisoner's mouth; and, again, in the law as to the custody of infants.

Cases of identity are always most unsatisfactory. However strong the evidence on either side, there is always just that possibility of doubt so irritating to the logical and legal mind. We do not for a moment suggest that the Brighton bigamy verdict was not correct, we only object *in toto* to Mr. Justice Field's summing up. His Lordship is paid to deliver justice, not sermons; and we should have thought that the recent case of mistaken identity in the country, in which Mr. Justice Stephen sent a man to prison for burglary—the wrong man, unfortunately, as was subsequently conclusively proved by the right man turning up and confessing the crime. We hold that in no case of identity should a judge say that he is as certain the prisoner is the right man as that he (the judge) was sitting on the bench: if Macdonald should turn up such a statement would read somewhat foolish.

A correspondent writes us objecting to our "note" in the last Number, that "it seems curious that a witness who objects to take the oath can make a declaration, but that a juryman must take the oath or nothing." Brevity, it is oft repeated, is the soul of wit; it may be so; it should be so; we hear the statement made so often that by this time it must be true. Of one thing we are sure: brevity, in legal writing, is the soul of mistakes. Our remark was directed against "atheists" solely. They may make a declaration as witnesses, but on a jury they must take the oath or stand down, for they cannot claim conscientious scruples as Quakers, Moravians, &c., who may be allowed by the judge to affirm, if, from conscientious motives they decline to take the juryman's oath.

Truly a "chiel is among us taking notes!" Nay, not one "chiel," but several. Don't we hear of it when we make a misstatement! Why, during the past month we have had to buy a dozen second-hand letter files to file all the letters we have received drawing attention to the fact that our epitome of the Prevention of Crimes Act, 1871, Amendment Act, 1885 (48 & 49 Vict. c. 75), in the October Number, p. 270, contains an erroneous statement. We made it in haste, we are now repenting it at leisure; we stated in an *obiter dictum* that we had not observed that charges of assault on the police had decreased; but, as our correspondents point out, the Act does not apply to "assaults" on the police, but to resisting or wilfully obstructing in the execution of duty only, and that, therefore, the punishment for an assault on the police still remains the same. Well, we accept our correspondents' correction with thanks, and certainly do not intend by practical experience to ascertain the truth of their correction; we have no doubt they are right. Again thanking them, we consign their letters to our twelve newly-purchased waste paper baskets.

When did that solicitor, who brought an action the other day in the Mayor's Court to recover his bill of costs, pass his "Final?" when did he pass his "Intermediate?" and what editions of books does he keep in his library? He advised a client to defend an action on a guarantee, on the ground that the consideration was not expressed on the face of the guarantee, and that, therefore, no action could be brought on it. The action was defended and lost. The client declined to pay the costs, and that ill-advised and ill-advising lawyer brought an action against his client for the costs. Questioned as to the reason for the peculiar advice he gave, he said he founded his advice in a law book he possessed. What book? by whom written? when published? We yearn to see that book. Asked further, if he knew anything about the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), he stated that he was not aware that this Act had expressly provided that it should not be necessary to set out the consideration on the face of the guarantee. Could this man have read "Stephen" for his Intermediate? We don't wonder the jury thought he had been guilty of negligence. Unfortunate plaintiff! That ignorance of the statute 19 & 20 Vict. c. 97, cost him 10*l.* for damages!

We cannot resist quoting the following from the "St. James' Gazette" for the benefit of our Radical readers who do not support that paper, and so would probably miss the story:—"A 'scene' in a court of justice is not an uncommon incident in many parts of the United States, and seldom attracts much notice from the general public. A more than usually sensational affair of this description took place, however, on the 30th of September at Santa Cruz, California, where it created deep interest. Judge Rountree was making out the commitment of a man named John Kennedy when the prisoner attempted to 'clear out of the court room.' He was immediately seized by a constable, and a terrible struggle ensued. Kennedy, who is a desperate character and possessed of prodigious strength, was getting the better of the officer, when the judge, who had apparently ignored the disturbance, and without any undue hurry had finished the writing of the commitment, suddenly descended from the bench, and, divesting himself of his coat, said in a stern voice, 'Leave him to me.' Judge Rountree is noted for his remarkable muscular development, and intense was the excitement of all present as he 'stood up' to the prisoner in an attitude of dignity and determination. There was hard hitting on both sides; but in less than three minutes Kennedy was in a frightful condition and utterly unable to 'come up to time.' The judge then re-ascended the bench, and, with a few impressive observations, imposed an additional sentence of thirty days' imprisonment on Kennedy for contempt of Court." The conclusion of the story is delicious. "With a few impressive observations," of course—to the spectators—the judge's observations had been quite impressive enough for Kennedy. Mark, also, the additional imprisonment for contempt of Court: scarcely necessary, we should have thought, when the Court could so well take care of itself.

The story reminds us of one we had ourselves from a friend who had "roughed it out West." Two landed proprietors had a bit of a dispute about a boundary line, important to them on account of its involving the loss or gain of a particular watercourse. The evidence was conflicting; the Court proposed an adjournment to the place. The little ride, occupying a day, was accordingly taken, our friend accompanying as a friend of the Court. On the way our friend noticed that plaintiff and defendant were both heavily armed with sixshooters and knives, and, as a friend, he warned the Court that there might be some trouble ahead. The judge merely replied that he thought so too, but was quite prepared, and he also produced a sixshooter, which he meant to use if there was any contempt of Court knocking about, or any endeavour to resist his decision, which he considered likely; and to our friend he observed, "Guess I asked you along of me to see this job through, sort of thought you might like to see the fun, and that you'd come in useful like in assisting the Court"!

We have had sculptors working in Court; jurymen turned into wine-tasters; we sometime ago predicted that this kind of trial would go on until probably we succeeded in reviving trial by ordeal. We are certainly getting along nicely. The last case is one of trying on a bodice to convince the Court that

it did not fit. At the Liverpool County Court there was a dispute with a dressmaker about the fit of a certain bodice. The plaintiff, who refused to take it, alleged it was too short and too much padded. The dressmaker stated that bodices were now cut short on the hips, and that as to the padding it was necessary, on account of the lady being deficient in the place where the padding was placed. The plaintiff did not desire to have her figure improved by the dressmaker, she was quite satisfied with it as it was. The question of misfit or fit appeared to be incapable of decision, till at length the dressmaker claimed that it should be put on. The plaintiff at length consented to do so, and adjourned for that purpose. On her return the judge and Court proceeded to criticise the fit. The judge at last made a suggestion—such a suggestion, just like a man—that surely the fault of the bodice being too short might be remedied by bringing the dress higher up; but then his Honor appears to have forgotten all about the ankles. The matter was, however, at last settled. We sincerely trust the judges intend to restrict these trying and trying-on trials of feminine apparel to bodices!

We shall certainly go and live at Derby. We had no idea the Lord's Day Observance Act might be made so useful. The justices at Derby convicted certain newspaper-men for selling papers in the streets on Sunday. Will the Magistrate at Bow Street kindly take note of this? We are going to make a desperate effort next Sunday morning and get up early, so that when the blatant ruffians come howling down our street at 9 a.m. we may rush downstairs, call a policeman, and give them in charge. So look up your law, Magistrate of Bow Street, we shall be with you Monday morning. If the Lord's Day Observance Act only enables us to stop the mouths of these disturbers of our Sunday slumbers, we will never more unkindly criticise it. Many thanks, Derby Justices, for the idea!

Here is our old friend the "Globe" at it again. Just because a County Court judge does not explain the law so clearly as he might do, that is surely no reason for the "Evening Pink 'un" to write nice little paragraphs; very smart if the law was only as it said, but, as the law happens to be just exactly what it ought to be, the aforesaid paragraphs fall rather flat. A man's wife left without cause and took away some of "his goods and chattels." The judge came to the conclusion that there existed no civil remedy, that is, the husband could not bring an action in the County Court, but the judge did not say, at least we decline to believe so, that the husband could not proceed criminally against his wife under the Married Women's Property Act, sect. 16. Of course he can. Why does the "Evening Pink 'un" not refer to the Married Women's Property Act before writing such stuff?

Why were the Middlesex magistrates this year so complaisant in granting music and dancing licences? The applications were granted with scarcely any opposition. Such a lot of music we are to have now, there will be no eating a quiet chop anywhere. One magistrate said that he made a study of music hall entertainments, and so considered he was an authority on the subject. How some people must wish they were Middlesex magistrates; how pleasant to remark when met by an inconvenient acquaintance, that they were simply there doing their duty "studying the subject."

How easy it would be to get rich, if there were no interfering Courts, by simply lending money at 1,300 per cent. A money-lending case came the other day before Mr. De Rutzen, who took the trouble to calculate the interest, and found that, taking into consideration the delay of a bank in cashing a cheque, the interest was at the rate of 1,300 per cent.: truly the highest rate of interest we remember in any of these cases.

In our correspondence columns will be found two letters anent the Honors Examination. We should not have set out these letters *in extenso* did we not feel that just at the present time the subject is one of interest. For our own part we are inclined to agree with R. P. G.'s views on the subject. We have long advocated the placing of the second and third class Honormen in order of merit, and we anticipate that this change will not be long in making its appearance.

In these iconoclastic days it is truly refreshing to find something restored instead of destroyed. An interesting relic of the old Admiralty Court, a large and handsome gilt anchor, has been placed at the back of the judge's seat in the Admiralty Court. The old anchor has voyaged a bit in its time; from the Admiralty Court at Doctors' Commons to Westminster, and from Westminster to the Royal Courts: in its new abode, set as it is in a dark frame with a background of black velvet, it looks very imposing. Another old relic is the silver oar, now brought into Court and placed on the registrar's table. We love to see old relics preserved when harmless, as much as we detest old laws when inconvenient and out of date.

PREVENTION OF CRIMES ACT, 1871, AMENDMENT ACT, 1885 (48 & 49 Vict. c. 75).

(*See p.* 270, *ante.*)

A CORRECTION.

In our epitome in the last number we stated that this statute related to assaults on the police: this was incorrect; the Act applies only to "resisting or wilfully obstructing in the execution of duty."

SOLICITORS AS REFORMERS.

"Our action in the past, and our views with regard to the future."

The key-note to the trumpet blast sounded by our President in his recent address to the annual provincial meeting of the Law Society at Liverpool. What has been our action in the past? what will be our action in the future with regard to the fundamental and radical changes, in both principle and procedure, which with the advent of the new Democracy now impend?

Our action in the past: Have we, as has been so persistently and pertinaciously alleged, done all in our power to impede and thwart reforms in the law which the people at large desired? Are we indeed, as represented, "a set of harpies who render the transfer of land at any reasonable price impossible;" who for our selfish interests have stood and still stand in the way of all reforms; who revel in the law's delays; glory in the forms and ceremonies, often useless, which hedge around the simple execution of a deed; who of set purpose and with wicked and malevolent designs brought pressure to bear on the late Lord Cairns to procure the passing of the Settled Land Act, that legal business might receive an impetus, and Chancery an increase of work? Are all these serious indictments true, nay, have they a shadow of justification? Truly, as our President observed, "for party and electioneering purposes" we are now subject "to a flood of abuse, misrepresentation and invective," both from the press and from the platform, which in many cases must certainly be "actuated by personal and ignoble motives, with a view of giving fresh impetus at the present moment to an old and dying prejudice against lawyers and their doings."

The abuse with which till recently we have been assailed could indeed be passed by with a smile of contempt, but with the election fever and the greed of place, politicians of all shades appear to have united to make common cause against "lawyers." They play with unwearying persistency on the same strings. The difficulty—the impossibility of finding purchasers for land—is caused solely by the expense and difficulty of transfer. This statement made by land reform enthusiasts was of slight moment, but now that for mean party purposes, persons occupying, "I regret," said our President, to say "exalted positions," time, and high time indeed, is it to enter a strong protest, yea, not only a protest, but, as we are gratified to find, the Council propose, in addition, to have prepared for circulation amongst the members of the new House of Commons, and all others interested, "a careful and elaborate paper," showing "what our action has been in the past, and what our views are with regard to the future." We doubt not, as our President says, such a course will place our conduct in a correct light before the country; for it will be seen from the records of the Society that we have urged reforms long before they were finally introduced; but cannot share his hope that it will also aid in promoting a sound public opinion on the subject; public opinion more readily pursues the will o' the wisps than the friendly and fixed cottage lights over the dangerous marshes of reform.

Whence this hatred in England of "lawyers"? An oft-recurring question, but one not easy of satisfactory answer. Why do the races of Teutonic extraction detest those whose object of existence is to enforce obedience to the laws? Why do those of Latin extraction detest those whose object of existence is to enforce the laws of health or of morality? The never-failing mirth-provoking object of an Englishman's shafts of wit, the lawyer; the Frenchman's butt, his doctor; the Spaniard's and Italian's, when out of hearing, the priest. Can it be that the Englishman loves his pocket, the Frenchman his good living, and that an interference with the special objects of their devotion engenders an implacable hatred of those who advise such interference?

But ridicule and sarcasm alone take but little effect on the parchment skin of the lawyer; they alone would not stir our President to again protest. The crusaders against us now advance with charges of want of honour, want of probity, want of all those qualities which constitute a citizen's right to be at large; the charges brought against us once proved as true, then the whole profession should indeed be swept away.

But to return to our original question, whence this hatred of "lawyers"? In the indiscriminate use of the word "lawyer." To the public at large every man trained to the study of laws is a "lawyer;" so, indeed, he is. Their functions, however, are as different as those of the general and the private soldier: the one plans and administers, the other executes. With the British public, at the bottom of all mischief, is, not "woman," as Easterns affirm, but the "law." Who, then, make the laws? Most emphatically not the "law-

yers," not that branch of the lawyers with which the public come into conflict; not, most emphatically, the "attorney" or "solicitor" against whom the public pours out the vials of its wrath. The solicitor, the attorney, have nothing to do with the making of statutes nor with their construction; their duties are to know the laws when made, the construction placed on such laws by the judges, and to advise their clients as to their rights under these judge-interpreted laws. How, then, in justice blame the solicitors? "Nay, but," remonstrates John Bull, with characteristic pertinacity, "tell me, then, pray, do not 'lawyers' draft the statutes, and do not lawyers constitute an enormous and utterly disproportionate part of both my House of Commons and my House of Lords?" True, indeed, they do draft the statutes, lawyers there are in *galore* in both Houses, but still we attorneys, we solicitors, we are not these lawyers. The representation of our profession was in the last House of Commons only 12 members; the other "lawyers" are barristers, successful and opulent, or ambitious and impecunious.

Here, then, we arrive at the kernel of our argument. These men make the laws more or less perfect, more or less in their own interests; the non-legal members then generally succeed by amendments in marring; and, finally, the Bench construe and interpret; and is it then matter for wonder that, with the very best intentions, and in all uprightness of conduct the Bench succeed in manufacturing law, to be administered by the "solicitor," which, imperfect and ofttimes unjust, produces in the client "hatred, malice and all uncharitableness" towards us, the innocent persons. The blindness of the public in realising this fact is, we contend, one good and substantial reason for the cause. The branch of the profession against whom this hatred should, if at all, be directed is the "Bar." They are the assistants of the Bench in placing a construction on the laws. The "Bar" cannot of necessity be reformers: they owe their very existence to legal intricacies and subtleties. To expect them to assist to charm these away would be expecting too much from frail human nature. Law free from intricacies and subtleties would then be "understanded of the people." Solicitors would be able to advise their clients with great certainty and precision; actions to settle dubious points would decrease; titles to land would be more easily deduced; solicitors would not be under the necessity of sending drafts of deeds to counsel for advice and perusal. Intricacy and subtlety divorced from law, what then would remain for the "Bar"? Nought but eloquent Court advocacy, in which but few excel. With forethought and with justice did we entitle our article "Solicitors as Reformers." Reforms do not seriously menace the interests of solicitors. Wills must still be drawn; actions conducted; mortgages effected; family compromises arranged. These and the thousand and one other matters which go to make up a "solicitor's practice" will remain unaffected.

Having now shown that the solicitors, who do not make the laws, cannot be held responsible for their defects, we will now endeavour to meet the "parrot cry" of our opponents, the dreaded subject of "costs."

We feel that in what we are now about to urge even our opponents must perforce agree. Many and many a man, honourable, upright, trustworthy, across whose mind there never "glinted" a thought of defrauding a neighbour out of a penny piece, will without scruple or hesitation in general conversation with a lawyer talk over his business affairs, and, if necessary, endeavour to ascertain his view of the law as it bears on his case: this he will do without ever thinking of offering any fee. Now what has that man done? He has "picked that lawyer's brains," between which process and "picking a pocket" there is, in moral ethics, no distinguishing line. But the man cannot be in reality censured: he simply and honestly fails to comprehend that the lawyer's answers are money or money's worth; the knowledge which enables a lawyer to answer has been bought with money and work, hard work, and forms as much a "property" as the lawyer's watch.

Now we have prefaced our further remarks on the subject of costs with this argument with the view of bringing home to our opponents that they fail to understand the value of brains; hence, we affirm, their reiterated charges of "excessive costs." They fail, in the case of a lawyer, to realize that skilled labour must be paid for; they thoroughly realize it in the case of physicians and surgeons, but the Angel of Death is a mighty opener of "purse strings." All this, they readily admit, may be so, but they complain that when they want to sell property or to do almost any important act of life they must perforce fall into the clutches of the lawyer. But here is the fundamental weakness of their argument: every man can act as his own lawyer; he can draw his own

will; he can draw his own lease; he can plead in Court; but he doubts his own powers to protect himself in his contracts from the cunning of his neighbour, or to do justice to his cause in Court, and he therefore seeks skilled assistance: therefore must he pay, not just exactly the estimate of value he places on the assistance, but that amount which will enable men of intelligence and position to retain that position in the world.

Further, in connection with this subject, it is not true to affirm that solicitors as a body have been opposed to reasonable reforms in costs. The Law Society urged, and many solicitors welcomed, the change in mode of remuneration for conveyancing costs; they, years since, urged, and at length obtained, the right, which was previously denied them, to tell their clients in advance what amount they would take for the transaction of any particular business; they offered no opposition to the new Rules of Procedure, although the effect has been, as they pointed out it would be, to make little difference to the client, for fees now go to the Revenue which formerly went to the lawyer; and quite recently they saw the costs in bankruptcy business so ruthlessly cut down that many of the best men decline to take up bankruptcy business at all for recompense so inadequate—yea, so inadequate that the authorities themselves now propose an increased scale. This, then, with regard to our very income, has been "our action in the past:" our recompense abuse and invective, a specimen of which we have lately had in the letter of a noble Duke. Truly may we just as well "squeeze" our clients as do the "rogues" of the profession; for honestly dealing with them, we have nought in reward but the satisfaction of having done right.

"Our action in the past;" we leave the promised statement of the Law Society to further defend this; there will be found "*facta non verba.*" Our action in the future; and by our action, let it be well understood, we speak now of solicitors as a body. The future; here at least we have both desire and opportunity to give the lie to base insinuations made against us. The future lies not with men who sit in the Council Chamber of the Society: the future of the law lies with the newly-admitted, and those seeking admission. It is for them to peruse the President's address, to weigh the well-chosen, dignified words of defence, and note the spirit of reform in which men, even those nurtured, we may say, on technicalities, meet proposals which some time since floated light as summer fleeces, but now impend, as does the heavy thunder-cloud, bringing after it either a brighter and happier day, or devastation of the surrounding country.

Let the future lawyer glance down the report of the annual meeting and note the temper of the arguers and the nature of the subjects discussed: the reform of the land laws; abolition of primogeniture; abolition of copyholds; abolition of the law of landlord and tenant, all discussed with an interest and fervour that, did the outside public but know of it, could not fail to convince them that lawyers are eager to assist in the reform of laws; and although there be some that affirm that we are destroying our incomes—others there are of not so timorous a spirit who see ahead more work for lawyers, more contentment for clients—still the public should remember that the future for lawyers must at best be a sealed book. Reform may or may not ruin us: all credit then to those amongst us who welcome, nay work, for reform for reform's sake.

A more appropriate conclusion to our remarks on this address of the President—within our recollection the finest, most dignified, ever delivered—could scarcely be found than the advice with which that address concludes: "We, as a class, have exceptional power for good or evil." Some there are amongst us who exercise this power for evil; this is so in every class, but only in our class do we take active steps to expel them. How great is this power for good or evil few realize. Let clients pause when minded to curse; pause and take thought. Has it always been the lawyer's fault that a claim was disputed or an action started? how many has he not succeeded in arranging? how many bitter family disputes smoothed down? how many scandals avoided known only to him? Is not the lawyer in reality, as Shakespeare said of the sexton, "a mighty peacemaker"?

We possess a great power: let us see to it that we "use it with wisdom and moderation, and in so doing help on rather than obstruct the great work before us."

CURIOUS CASES.

No. 6.—Is a Married Woman's House her Castle?

Recent legislation, as we have frequently remarked in these columns, has been directed to a great extent to the emancipation of married women

from the disabilities which the old law laid upon them. The ancient doctrine, that husband and wife are one, has been destroyed, and a *feme covert* is a thing of the past.

Since the last of the Married Women's Property Acts, the series of which commenced in 1870, a woman when she marries does not, as formerly, merge in her husband. As far as her rights over property are concerned, she remains as much a *feme sole* as she was during her spinsterhood. Marrying for money is a thing of the past; and the man who thinks that by wedding a wealthy lady he will become master of her property, provided he is able to escape the formality of making a written settlement upon her, is sadly deceived. The wife retains her property, and as full a power of dealing with it as she had previous to her marriage; and her husband is no longer able to say, "What is thine is mine." What the effect of this changed state of things may be upon their social life yet remains to be seen. The law has not yet been in operation for a sufficient length of time for the consequences of the abolishment of the "joint purse" to be seen.

But while there is no doubt that this recent legislation has put an end to the control which the husband formerly possessed over his wife's property, it still remains an open question whether or not it affects any other rights which marriage gives to the husband over his wife. Has the relationship of the husband to his wife been affected in any other point? For instance, has the husband's marital right been in any way diminished? He can no longer meddle with his wife's property against her will, nor can he prevent her from dealing with it as she pleases; but does his status as her husband give him any right to derive some benefit from any property which she may happen to possess? For instance, suppose she is the owner of a house, has he the right to insist on living in it with her, if she makes up her mind to dwell in it; or can she turn him out of doors? He has the right, as her husband, to enjoy her society. Will the fact that to enjoy this society he will be under the necessity of committing a trespass upon her property in any way take away from that right? This curious question was touched upon in the recent case of *Weldon* v. *De Bathe*. There a married woman brought an action for damages for a trespass against the defendant, the trespass being constituted by an unauthorized entry made by the defendant into her house. The defendant alleged that he had entered the house by the authority of the plaintiff's husband, who had instructed him to go there and remove certain articles. The question was, then, Was the husband competent to give such an authority? The house was the separate property of the plaintiff. In her enjoyment of it as separate property, had she the right to entirely exclude her husband and his agents from the possession of it?

The following extracts from the judgment in the case will show how the judges regarded the question:—

Brett, M. R., said: "The defendant states that he entered the house by the authority of the husband of the plaintiff. Can the husband himself in such circumstances as here exist enter such a house against the will of the wife? It is said that he can do so by virtue of his marital right. I give no opinion on this question. It is not necessary to decide it now, and I decline to do so. But I think that in the case of an ill-conducted husband the argument would have a startling effect, and would have produced consequences not other than alarming. Assuming, however, that a husband can do so, I am clear that the effect of the Acts of 1870 and 1882 is that the husband cannot delegate his right to any one else."

Cotton, L. J., said: "It is not necessary to decide whether a husband has a right to enter such a house in circumstances such as exist in the present case, but I do not differ from the opinion expressed in the Divisional Court, nor do I desire to depart from the opinion expressed by myself in *Symonds* v. *Hallett*. But assuming that a husband has, in consequence of there being no judicial separation, a right to go to the house for the purpose of being with his wife, still the question here is, whether he can authorize other persons to enter that house against the will of the married woman. The defendant did not enter this house for any purpose connected with or incident to any desire of the husband to live with his wife in this house, and I am of opinion that a husband cannot by virtue of any power that he may have of living with his wife in such a house authorize another person to enter that house, not for the purpose of assisting the husband in any desire to live with the wife in the house, but, as in this case, for quite another purpose and with quite a different object. I give no opinion as to how far a wife could be heard to say that if the husband was living with her in such a house the entry of some one authorized by him was not incidental to the husband's living there. If the husband is living there, then

I think her separate property and her rights may be burdened by that fact to some extent."

Lindley, L. J., said: "The defendant says that he entered by the authority of the husband. But this case does not raise the question whether a married woman, living as this plaintiff is living, can keep her husband out of such a house as this, or whether, if he is living with her in such a house as this, he can invite visitors into the house; and I express no opinion on that question. For in this case the married woman, the plaintiff, was living without her husband in a house which was her separate property, and in these circumstances the husband authorized the defendant to enter the house against the will of the plaintiff. The right of the plaintiff is in the circumstances of the case an exclusive right *except as against her husband*, and he cannot authorize other persons to enter without her consent. She was solely in possession of the house, and he was not living in the house."

It will be seen that this case does not dispose of the whole question. It simply decides that when a husband and wife are not living together, but the wife is living alone upon property which is her separate property, she has the right to exclude all persons from that property except her husband himself. Whether he himself has the right to come upon it in virtue of his marital right seems to be still a moot question.

We will conclude these remarks by mentioning some of the cases alluded to in the case of *Weldon* v. *De Bathe*. One of these was *Symonds* v. *Hallett*. Here a married woman to whose use property had been settled upon her marriage, being on bad terms with her husband and having instituted divorce proceedings against him, brought an action in the Chancery Division to restrain the husband from entering her house. The Court was of opinion on the evidence that the husband desired to enter, not for the purpose of enjoying the wife's personal society, but merely to use the house as a house. Chitty, J., granted an injunction against him on the authority of an older case, *Green* v. *Green*. On appeal the Court, while declining to express any opinion as to the correctness of the decision, thought, on the ground of convenience and of the proprietary rights of the wife, that the injunction should stand until the hearing, and dismissed the appeal. The question was raised whether separate use, whilst giving the wife the rights of a *feme sole* as regards property, enabled her to prevent her husband exercising his rights and duties as a husband. Cotton, J., said he would not decide that question; then he said, "In my opinion it is a question to be seriously considered, whether there is in the creation of a Court of Equity (which a separate property is) any provision or anything to be inferred from it which would entitle the wife to exclude the husband from the place where she is residing and from coming there to exercise the rights which he has as a husband." He granted the Court would interfere when the husband wished to deal with the property as if it was his property, but said, "It is a very different thing to say that a wife can insist on the Court preventing her husband from entering the house. To say that she is a *feme sole* is a mere hypothesis and imagination, because she has a husband, though as regards property she is to be considered as a *feme sole*. Is the husband to be considered a stranger because the property is vested in the wife for her separate use? My view is that separate use was not created in any way to enable a wife to prevent her husband exercising his rights and duties as a husband except that the property is hers." Bowen, J., admitted that the settlement to the wife's separate use would entitle her to prevent her husband from interfering with her proprietary rights over her house, but would not express his opinion on the point whether it entitled her entirely to exclude her husband.

In *Green* v. *Green*, the case alluded to in *Symonds* v. *Hallett*, there was a wife living apart from her husband. The husband, without the consent of his wife, had entered into possession of the receipts of his wife's separate estate, and had sold some furniture and taken possession of her house, and had threatened to take a sum lying in the bank and being part of the separate property. Here an injunction was granted restraining him from so doing, and a motion was made by him to dissolve it, it being contended that the injunction operated as a divorce *a mensâ et thoro*, and that in no case had the Court carried a trust for separate estate to that extent. The Vice-Chancellor said that he saw nothing to prevent the Court from protecting the interests of the parties under the settlement. If the injunction had the effect attributed to it, a question which he could not determine, the husband would not be without his remedy in the ecclesiastical Court. The motion was then refused.

In another case, *Wood* v. *Wood*, the wife carried on the business of an hotel keeper in a house which was hers for her separate use. The hus-

band had disappeared for six months, and then reappeared and insisted on occupying what rooms he liked and on acting as if he had the full rights of owner. He took the key of the cellar and kept it so that the guests could not obtain what they wanted. In this case Malins, V.-C., followed *Green* v. *Green* and granted an injunction against him. So, too, in *Hunt* v. *Hunt*, where a husband in a separation deed had covenanted not to compel his wife to cohabit with him, it was held on appeal that the wife was entitled to an injunction restraining him from proceeding in a suit which he had commenced in divorce for the restitution of conjugal rights. And in *Allen* v. *Walker*, a wife who had separate estate leased it to A. A. entered, and the plaintiff sued him for trespass, wrongful conversion of certain goods, and assault. The defendant justified his proceedings on the ground of his being the lessee from the plaintiff's wife. Martin, B., in giving judgment, said, "We entertain no doubt that a Court of Equity would grant a perpetual injunction against the defendant's entering on or continuing to occupy the land, the separate property of the plaintiff's wife. It appears to us that if a husband obtained judgment in an action of assault, the assault being the removal of him from a house the separate property of his wife, into which he had obtruded himself against her will, a Court of Equity would interfere to prevent him obtaining the fruits of his judgment. If they did not, we think they would fail effectually to protect the wife's separate property."

It would seem, then, that the right of the husband to reside on property which belongs to his wife for her separate use is not definitely settled. It is clear that, in the exercise of his marital right, he is entitled to enjoy the society and companionship of his wife. Can he, to assert that right, infringe upon the rule that the wife may do what she likes with her own property, and exercise all such rights over and in connection with it as she could do were she a *feme sole?* There is but little doubt that if, as in *Wood* v. *Wood*, the husband *mis*-used his wife's property, the Court would interfere and grant an injunction against him. But how would the case be if he made no more use of the separate property than was consistent with a due exercise of his right to his wife's company? As we said, this point seems as yet to be unsettled. It will certainly be very hard to draw the line and to say at what point a use of the property, which the enjoyment of the wife's personal society necessarily entails, ends and a misuse thereof begins. Certainly that husband will have a good excuse for complaining, who, without means of his own but wedded to a rich wife, finds that she has power to forbid him to enter her house, and that while he is compelled to spend the night, say under the arches of Waterloo Bridge, she is enjoying all the luxuries which unlimited wealth and a mansion in the West End can procure.

COMPULSORY REGISTRATION.

So long as visionary and Utopian Radicals only ventilated their advanced opinions as to the necessity of a thorough reform of the land laws and the infallibility of registration as a remedy for all the evils of the present system, so long as they and similarly minded individuals only put forth their peculiar views, there was no necessity to take the question of land or title registration seriously; it was sufficient to regard it as a blessing or otherwise that the distant future possibly held in store for us or the next generation.

The question has, however, now taken definite shape and form, and it forms a test question on which all candidates for parliamentary honors and discomforts are compelled to give satisfactory replies. The supporters of this panacea are drawn from all classes; the proposal must, therefore, be seriously considered.

That the next Parliament, whatever its constitution, intends, nay, will find itself compelled, to deal with the subject, is certainly unquestionable. At the one extreme of political parties we find a Tory of Lord Salisbury's position and strength publicly stating in his manifesto that he had seriously discussed the subject with the Lord Chancellor, who had unhesitatingly expressed himself in favour of registration of land as an all-sufficient remedy for the present evils of land transfer. Lord Salisbury to Mr. Arthur Arnold, M.P., President of the Free Land League, and Mr. Broadhurst, M.P., President of the Leasehold Enfranchisement Society, are, indeed, as the north and south poles, from the supporter of conservation and preservation of all things hallowed by age to the miners and sappers of all things settled and established. When such men are found advocating similar remedies we feel that nought remains but to bow to the inevitable.

Now amid all this talk of compulsory registration but few give consideration to detail; the

many amid the noise of argument entirely forget that compulsory registration may be either (a) of transactions, or (b) of title. The respective supporters of these two systems will doubtless find themselves as much opposed as the supporters of the present system are to the priciples advanced by the Radicals.

In the order we have referred to these two systems, that of compulsory registration of transactions comes first. Now, the system of compulsory registration of transactions is not new in this country. Such registration is and, as is well known, has been compulsory in the counties of Middlesex and Yorkshire for some years, with results which we think will be universally admitted as being far from satisfactory to clients, solicitors, or any one concerned, except the officials of the registry offices; and it cannot be doubted that the proposal to institute a similar system would receive strenuous opposition from all. This system may, we should say, be put aside without further consideration: it is obvious that the registration of which present reformers speak is registration of title, not optional but compulsory registration of title.

It will be within the knowledge of all who have given the slightest attention to this subject, that we have witnessed two legislative attempts to induce landowners to register. The first was the Transfer of Land Act, 1862, introduced by Lord Westbury; the second was the Land Transfer Act, 1875. Both statutes proved disastrous failures, the reason in both cases being the same: they were both optional statutes; landowners were permitted to make application for registration of indefeasible titles if they chose; experience proved that they did not so choose. The question naturally arises whether these failures of the statutes are to be attributed to the unwillingness of landowners to register or to inherent defects in the statutes themselves. It is thought by many, and we should incline to the same opinion, that the failure is in both cases chiefly to be attributed to the defects of the statutes themselves. The object of both Acts was the same, to induce landowners to register their titles; strange methods of inducement were indeed adopted; an application under the 1862 Act was indeed a matter of fearful and wonderful complication; the standard of purity and indefeasibility of the title required by the Land Registry Office under the Act of 1875 was placed too high. The officials probably cannot be blamed for requiring a perfectly good title; by so doing they freed themselves from the responsibility involved in allowing defective titles to be registered, reduced the applications and, as a consequence, their work, and are now the happy possessors of some of the best *sinecures*.

The enterprising owner determined to register his title is met at every turn by impossible requisitions and needless expenses: boundaries must be strictly proved, maps drawn out, deeds abstracted, outstanding interests got in. "For whose benefit," the enterprising owner might inquire, "for whose benefit do I suffer?" The answer was plain: that a subsequent purchaser, heir, devisee or donee of the property might in future transfer the estate with less expense and trouble. This startling fact, once brought home to the mind of an intending applicant, did "give him pause," and caused him rather to bear the ills he knew of than fly to others, more especially as he could in such a case legitimately comfort his conscience with the old reflection, that posterity had done nothing for him; why, then, should he suffer for posterity?

The statutes failed; the system of optional registration has had a trial, not perhaps a fair trial, but a sufficient trial to demonstrate that, even under more favourable circumstances, it would scarcely succeed. In 1878 the two statutes were duly sat on and reported on by a Select Committee, which recommended that for compulsory registration to succeed some of the following points (*inter alia*) must be attended to: (a) proper ordnance survey of England; (b) alteration in remuneration of solicitors; (c) reduction of time for title; (d) registries of transactions.

Now, on these recommendations, it may be observed that the proper ordnance survey is in hand. It will be completed, probably, just in time to afford reliable information concerning the country when its annexation by the German Empire takes place. The remuneration of solicitors has been altered. The establishment of district registries is now proposed, and as to the other recommendation we have shown that compulsory registration of transactions is not likely to be adopted. The reduction of time for giving a title we have reserved to the last, for on this it is necessary to remind our readers, as Lord Salisbury reminded his audience, that any compulsory system of registration of title involves as of necessity the passing of an Act giving every one who has been in possession of his land for, say twelve years, an indefeasible title.

Now it is obvious that the "onus" of proving

the advantages attaching to the proposed system lies on the supporters of the alteration. We cannot do better than take Mr. Arthur Arnold, President of the Free Land League, as an advocate in support. During September he delivered a speech on the subject, in which he strongly supported this compulsory registration of titles. "We ask," he said, speaking on behalf of the supporters of the League, "for conveyance by registration of title, which means, that the actual legal transfer of the land on sale and purchase shall take place upon the entry of the purchaser's name in the register." That this actual legal transfer shall so take place, it is, of course, absolutely necessary that the transferor shall have a title to transfer which the transferee will accept without demur. How, then, does Mr. Arnold propose that this title should be acquired? Possessory titles, he proposes, should be registered at pleasure, such possessory titles to become indefeasible on transfer. He does not, however, condescend to inform us what length of possessory title shall be necessary to require registration. It is no doubt his opinion that any man owning an estate at the date of the passing of the Act shall be able to put himself on the register as the possessory owner, and this without any question as to his right to be so registered; then, by Lord Salisbury's proposal, all those who had been in possession for twelve years would become possessed of indefeasible titles; but, according to Mr. Arthur Arnold, those who, say the very next day after registration, transferred their titles to some one else, would transfer an indefeasible title. We must confess that we ourselves rather incline to the twelve years' title.

Mr. Arnold next attacks the statement, that the fact that the ordnance survey is not complete renders the registration of land or title an impossibility, there being no complete authentic maps. On this point he quotes Colonel Leach, an authority on the subject, that the general supposition that there is any difficulty as to maps is a fallacy. We assume that it is intended that landowners shall prove their own boundaries when making application; the officials of the registry in whose district the estate was situate would then be able to check off the boundaries of the estates of different applicants against each other, and so arrive at a settlement; but this course would naturally entail litigation.

That the work of registration would not be incapable of management and regulation, Mr. Arnold adduces in proof the instance of the Bank of England with its 200,000 transfers of stock per year, its 400,000 alterations of accounts, all dealt with by 200 persons in 1,700 books. The transfers of land per annum would not, he maintains, probably be half this number: that the officials of the registries need not be lawyers, not even skilled clerks, he quotes the late Sir Robert Torrens, a man of great authority on the subject, who stated that this registration is simply book-keeping.

What other advantages then can be claimed for this registration? Sales and purchases would be rendered simple; property would be subdivided; charges on the land could be easily created; litigation would be avoided; fraud by concealing defects in title would be impossible; and last, but not least, costs would be reduced. Truly a millennium for landowners. What security have we that this stupendous alteration in our land laws would not end in disastrous failures? It is, answers Mr. Arnold, "no new thing." It has been long in use in Hamburg, Coburg, Australia, New Zealand, and to a limited extent in Scotland and Ireland, and everywhere gives satisfaction to all but the lawyers.

Are there then—can there be—any objections to a scheme which appears so perfect? The trouble of searching the registry; the dread of contracts, secret contracts, void of course for non-registration but still possibly involving litigation; the exposure of titles with all their charges and incumbrances; the annoyance that all the world should know when an owner requires to mortgage his property, and from the lawyers' point of view the diminution or extinction of costs of conveyancing.

This last objection, from the professional point of view, must naturally be the most serious phase of the question. It is matter of notoriety that conveyancing work is even now fairly profitable. A complete system of registration and cheap transfer will go far to annihilate conveyancing business. In Germany it is possible, it seems, to convey a property value 20*l.* for 6*s.* without legal assistance. We stand without doubt within measurable distance of such a calamity. What steps do the profession intend to take in order to protect their threatened interests? We shall without doubt, as a body, support the change if proved to be for the public benefit; the profession has naught to fear so long as testators are stupid, clients quarrelsome, and "the heart of man deceitful above all things and desperately wicked."

ELECTION PETITIONS.

In our last number we made a rash promise to give a short article on election petitions; the subject is opportune, for without doubt before our next number appears, the words will have become even as "household" words in the daily papers.

Assuming then that a candidate has committed some one or more of the various acts we mentioned in our last article, and that his opponents have determined to get him unseated, what steps must be taken to attain this truly charitable and laudable object? We will endeavour to explain.

The Corrupt Practices Act, 1883, is again in this case also our guide, in that it points out the procedure; our philosopher in that it teaches the nothingness of all human things, even a seat in parliament when obtained by bribery; our friend in that we could not write an article but for its having been passed.

The first and natural question is, within what time must the petition be presented? The 40th section affords the desired answer.

If the petitioner intends to petition on an allegation of an illegal practice, then the petition must be presented within fourteen days after the returning officer receives the return and declarations as to election expenses from the election agent and the member as to whose election the petition relates. Now suppose that the officer receives the return and declarations on different days, from which day does time then run? From the day on which the last was received. Or suppose, again, there exists, as there may do, a proper authorized excuse for delay in sending in the return and declarations as to election expenses, from what day will the time then run? From the date of the allowance by the returning officer of the excuse. Or again, suppose, as may well happen, that both candidate and election agent have some authorized excuse for delay, and get their respective delays excused, from what time then do these fourteen days run? From the allowance of the last excuse.

So much for the days from which, under varying circumstances, these fourteen days run. Now, it must be noted, that there is a further period allowed for presenting the petition in another case. Thus, suppose that in the petition you intend presenting you allege that since the day from which the fourteen days commenced to run the candidate or his election agent have made a payment, or done some other act in pursuance or in furtherance of the particular illegal practice on which you are basing your petition, then in such case you will have twenty-eight days from the date of such payment or other act within which you may present your petition.

Now, on what we have written the inquiring reader will at once desire knowledge on a further point. You refer, he will say, to periods of time reckoned by days: how far do Sundays, and such like days, count? The section provides the answer, by enacting that time in this section shall be computed in the same way as in the Parliamentary Elections Act, 1868. This, however, is scarcely for an inquiring mind an all-sufficient answer. We must turn up that statute, to find that Sunday, Christmas Day, Good Friday, and any day set apart for public fast or public thanksgiving, are to be excluded.

The observant reader will have noticed that all the foregoing remarks apply only to the presentation of a petition which is based on an allegation of the commission of an illegal practice. What, then, must be done when the act on which the petition has to be founded amounts to a corrupt practice, or any other act not amounting to an illegal practice? Our readers will kindly remember, that in our last Article we mentioned a considerable number of acts amounting neither to corrupt nor illegal practices, but consisting of such wrongdoings as illegal payments, hiring and employments, &c.

We have seen the varying and somewhat confusing periods within which a petition on illegal practices must be presented; now to dissect the question: within what time must a petition for corrupt practices, or any act other than illegal practices, be presented? We turn in this case to our guide, the Act of 1883, in vain: he is silent as the Sphinx of old. We are silently and impliedly referred to the Parliamentary Elections Act, 1868. A petition, says that statute, shall be presented within twenty-one days after the return has been made; and if it alleges corrupt practices, and further says there has been a payment of money, &c. in furtherance of the corrupt practice since the date of the return, then the petition may be presented at any time within twenty-eight days after the date of such payment, &c.

So much for the times within which election petitions must be presented. The trial and hearing come on, as anyone knows, before a Divisional Court, and are much as other trials, except that, as far as the actors therein are concerned, the proceedings will be rendered somewhat more

exciting for them owing to the attendance of the Public Prosecutor.

This hitherto sleepy official will next December be compelled to throw off his lethargic habits, for the Act requires his presence, or that of a representative, at every election trial. What does he here, then? He has merely to keep an eye on the witnesses; to prosecute them as he may think fit, or the Court may order, for offences under the Act. This prosecution may take place either at once before the Election Court, or before any other competent Court; that is to say, either before a Court of summary jurisdiction or at the assizes, or at the Central Criminal Court; but not at quarter sessions.

Suppose, now, that the Public Prosecutor elects to prosecute a person before the Election Court, what will be the procedure? The Court must first give him the option of a trial by jury; if he elects to be so tried, the Court must then order him to be indicted, and, upon such order being made, the Court has power (1) if the person is present, and the offence is an indictable offence, to make him give bail; or (2) if present, and the offence is not indictable, have him brought before a Court of summary jurisdiction, and there give bail; or (3) if not present, then it shall issue a warrant for his apprehension.

Probably, however, the offer of a trial by jury will be declined with thanks, and the prosecuted person may prefer to be tried summarily by the Election Court. The Court can then proceed to so try him; on conviction he will be subject to same incapacities as on conviction on indictment, and, further, if the offence is a corrupt practice, he may be imprisoned, with or without hard labour, for not exceeding six months, or be fined not exceeding 200*l.*, or, if an illegal practice, a fine not exceeding 100*l.*

That ambition for parliamentary fame, such as it is, should induce candidates, and their agents, to stray from the straight path of honesty and virtue, into the tortuous and devious by-ways of bribery and corruption, is probably sad but human. Sadder indeed is it to contemplate the stringent sections of the Act as to the improper withdrawal of a petition. That a petitioner whose keen sense of honour and justice alone—at least this is what they all affirm—lead him to take these unpleasant proceedings against his political opponent, for whom, privately, he entertains feelings of the greatest admiration, that a man so sensitive should permit for a moment improper proposals for the withdrawing of his petition, or in other words, allow himself to be bought off, destroys our last remnant, a very small remnant, of belief in political virtue. But so it is, and against this black offence, yea, blacker than bribery and corruption itself, the sections which now claim our attention are directed.

Let us assume that your candidate honestly and honourably desires to withdraw his petitition. He will find himself regarded as a prevaricator of truth. Before the Court will grant leave to withdraw a petition, all parties to the petition, their solicitors and the election agents, must make affidavits stating that no terms nor undertaking has been entered into as to the withdrawal of their petition; if any lawful agreement has been entered into, it must be set out; copies of these affidavits have to be left with the Public Prosecutor a reasonable time before the application for withdrawal is made, to enable that active official to "intervene," if we may use the term; in every case of withdrawal the Court is to report its opinion of the withdrawal to the Speaker, but, it would seem, has not power to refuse its leave.

Now we must unfortunately, for example's sake, assume that your clients are not animated by the purest motives as to the withdrawal of their petition. You nevertheless apply for leave to withdraw, and the necessary affidavits are made, let us for charity's sake assume, more or less honestly. The Court considers that there is some improper consideration for the withdrawal, that is to say, there is some payment or an understanding that the seat is to be vacated, or some other petition withdrawn. Then how fares it with your clients? They will be guilty of a misdemeanour, and liable to imprisonment not exceeding twelve months, and to a fine not exceeding 200*l.*; and in such a case the same power is conferred on the Court as to security for costs—which must be given to the amount of 1,000*l.*—which it possesses under sect. 35 of the Parliamentary Elections Act, 1868, *i.e.*, to substitute any other person as petitioner, and to order the security of the original petitioner to be left as security for the substituted petitioner.

Now we have been speaking somewhat loosely as to your clients, &c. The question which arises is, what persons can be made parties to the petition? The sitting members obviously are the respondents. Who can petition? For this we have to go to the Act of 1868. There are three classes (1) a voter, (2) a person claiming the right to be elected, (3) a person who was a candidate.

We have still one more point to consider, and that, though the last, is not the least. In the event of your petition being successful, from whom will you get your costs? Well, this depends. If the respondent succeeds in exonerating himself from the charge, but the Court thinks that corrupt practices have largely prevailed in the election, the Court can order the county or borough to pay the costs; or if it considers any particular person or persons to be in fault, it will compel such person or persons to pay the costs, but in such a case it must give him or them an opportunity of being heard by counsel or solicitor, and examining and cross-examining witnesses to show cause why the order should not be made. The Court may, of course, consider that the unseated candidate has been guilty of the charge alleged against him in the petition, and may order him to personally pay the costs; in which event it may be reasonably inferred from the silence of the Act that he will not possess a similar right of examining and cross-examining, &c., as any other person so charged would possess.

We trust that after a perusal of this brief outline the difficulties as to election petitions may be rendered a little easier for those interested in them, and that for casual readers who have no election petitions to carry through, the proceedings may now be invested with more interest for them than otherwise they would have been.

SOME ASPECTS OF REMOTENESS OF DAMAGE.

When one person has been injured by the act or omission of another person, the former, if he is of a litigious disposition, may be inclined to bring an action at law to recover compensation. But before he does so he will do well to consider, in the first place, whether the act of the latter has been wrongful. If he find that it has not been so, he will have to resign himself to putting up with his loss as best he may: he is without a remedy, for the maxim is, *Ex damno absque injuriâ non oritur actio.* But if, on the other hand, he find that the act or omission of the person which has operated to injure him was tortious, then he will *primâ facie* have the right to recover compensation for the injury which he has suffered. But there are circumstances under which the right does not exist; there are cases in which there may be both a wrongful act and a loss which flows therefrom, and yet the person who sustains the loss must go without remedy. For it is always necessary to take into consideration the connexion between the cause of the injury and the injury caused. Thus, though A. may be quite able to say that B. has done a wrongful act, with the result of causing him, A., a real substantial injury and loss, A. should further ask himself, May not the damage caused be so very remotely connected by the chain of events with the wrongful act as to deprive me of the right to recover? for there is no such general rule at law that a person is responsible for *all* the consequences of a wrongful act committed by him. The rule in these cases is enunciated in *Sharp* v. *Powell*—"A person is not responsible for all the consequences which may, under any circumstances, arise, and in respect of mischief which could by no possibility have been foreseen, and which no reasonable person would have anticipated. He is not expected to guard against or to anticipate consequences which no reasonable man could expect to occur. No doubt one who commits a wrongful act is responsible for the ordinary consequences which are likely to result therefrom; but where there is no reason to expect it, and no knowledge in the person doing the wrongful act that such a state of things exists as to render the damage probable, if injury does result to a third person, it is generally considered that the wrongful act is not the proximate cause of the injury so as to render the wrongdoer liable to an action." The rule, then, is that the wrongdoer is only liable for such damages caused by his wrongdoing as are the natural and usual consequences of his wrongful act, and such as a reasonable man, were he to consider what evils might be expected to spring from his act, might be expected to apprehend would happen. This rule is well illustrated by the case of *Sharp* v. *Powell*, which the reader cannot do better than carefully peruse. (See L. R., 7 C. P. 258, and see also *Shepherd* v. *Irish Railway Co.*)

We intend to confine our present remarks to those cases of remoteness of damage, where no damage would of necessity have resulted at all from the original wrongful act, but where the harm has been, in part at least, caused by the intervention of some third party; that is, to cases where the plaintiff would not have suffered loss, had the wrongful act of the defendant not been supplemented by the act of some extraneous party, which has converted an innocuous wrongful act into one which results in damage to the plaintiff. These cases may be roughly divided into three

classes:—1. Those cases in which the intervention by the third party has been involuntary or in self-defence; 2. Those cases in which the third party has intervened voluntarily, but his intervention has been made innocently or with excusable ignorance; and, 3. Those cases in which his intervention has been voluntary, but with culpable negligence on the part of the third person as well as on the part of the defendant.

As an illustration of the first class of cases we may take the leading case of *Scott* v. *Shepherd* (see Smith's Leading Cases, 4th ed. p. 343). Briefly the facts in this case, as the reader will no doubt be aware, were as follows: The defendant threw a lighted squib into a market house on a fair day, various persons caught it up, and in self-defence, threw it away from them. Finally it lighted on the plaintiff's stall: there it exploded and destroyed his eyesight. Here it was of course quite open to the defendant to say, "I admit I was wrong in throwing a lighted squib into the house under such circumstances, but I submit that the deplorable result is one for which I am not liable. If it had been left where I threw it, it is clear the plaintiff would not have been injured by the explosion. It was by the last person who handled the squib throwing it where it ultimately fell, that the plaintiff lost his eyesight; and if anyone is to be responsible, I, at any rate, should not be so. I cannot be considered to have contemplated the result which actually happened,—that that person should throw the firework on to the plaintiff's stall." But the Court held that the defendant was responsible,—that the consequences of his wrongful act did fall within the scope of those consequences which a reasonable man might naturally expect would result from his act. The Court said, "The throwing of the squib was an unlawful act at common law; the squib had a natural power and tendency to do mischief indiscriminately, but what mischief or where it would fall none could know. The fault *egreditur e personâ* of him who threw the squib. We consider that all the facts of throwing the squib must be considered as one single act, namely the act of the defendant; the same as if it had been a cracker made with gunpowder, which had bounded and rebounded again and again before it had struck out the plaintiff's eye." Here, then, the defendant was not exonerated by the fact that but for the interference of third parties the damage would not have happened to the plaintiff. The human agents were not causes of the damage done: the damage proceeded from the defendant and they simply carried it on: they and the squib formed only one instrument through which the damage inherent in his wrongful act operated.

The second class of cases comprises interventions which are made voluntarily but innocently, or with excusable ignorance, on the part of the intervener. Here the act of the intervener is not such as (like that in the first class of cases) is almost certain to occur, but is one which may or may not take place. A good illustration is afforded by the case of *Dixon* v. *Bell*. Here the facts were as follows: The plaintiff and defendant both lodged at the house of one Leman, where the defendant kept a loaded gun. The defendant left the house one day, and then sent a mulatto girl, his servant, of the age of about thirteen or fourteen, for the gun, desiring Leman to give it her, and take the priming out. Leman accordingly took out the priming, told the girl so, and delivered the gun to her. She put it down in the kitchen, resting on the butt, and soon after took it up again, and presented it in play at the plaintiff's son, a child between eight and nine, saying she would shoot him, and drew the trigger. The gun went off, and seriously injured the plaintiff's son, and this action was then brought. Here, of course, it was open to the defendant to say, "I admit I was culpably negligent in leaving a loaded gun about the premises, but the injury caused was not the direct consequence of my negligence. I could not help the girl firing the gun off. She acted voluntarily in so doing, and I could not have prevented her. And, moreover, I directed the priming of the gun to be drawn before the gun was delivered to her, and how can I be expected to have thought that there was any chance of mischief occurring after that precaution had been taken?" But the Court held that the defendant was liable; that he had not used every precaution which he ought to have done; that having charged the gun, and made it capable of doing mischief, he ought to have taken proper measures to render it absolutely safe and innocuous. The girl was admittedly too young and inexperienced to be responsible for the consequences of the discharge of the gun, and the defendant's allowing so dangerous a weapon to be trusted to a person ignorant of its dangerous character formed a part of his negligence, for which he was responsible. Another case illustrative of this class is *Lynch* v. *Nurdin*. There the defendant had left his horse and cart for a long time unattended in the street,

where some little boys were playing. Some of the boys got into the cart, and one of them then fell off the shafts, and got his leg crushed under the wheel. It was held that the defendant was under these circumstances responsible for his negligence. At first sight the act of the defendant and the injury done seem to be but very remotely connected. But it will be seen that the damage all arose from the negligence of the defendant in leaving his cart unattended in the street. If he had not done so, the boys would not have got into the cart, and the plaintiff's son would not have been injured. One of the consequences of the defendant's negligence was that the boys got into the cart. Any reasonable man ought to have foreseen that such an event was not unlikely to occur, and ought to have guarded against it.

Our third class comprehends those cases in which the intervening party has, in intervening, himself acted with culpable negligence; so that we have two culpable parties—the original wrongdoer and the intervening party. The question may then arise, Is the original wrongdoer to be responsible, seeing that the proximate cause of the injury was the wrongful act of a third party? Is a man, in doing or omitting an act, to take into consideration that some third person may by a wrongful act cause his own act or omission to operate to the injury of another? Of this class of cases *Illidge* v. *Goodwin* may be taken as a good example. There the owner of a cart and horse had negligently left them standing in the street, and a passer by struck the animal, causing it to back into the plaintiff's window. It was held that the owner of the horse and cart was liable. For the rule is—"If I am guilty of negligence in leaving anything dangerous in a place where I know it to be extremely probable that some other person will unjustifiably set it in motion to the injury of a third person, and if that injury should be so brought about, the sufferer may have redress by action against both or either of the two, but unquestionably against the first." The recent case of *Clarke* v. *Chambers* is very instructive on the point. There the defendant, who was in the occupation of premises abutting on a private road consisting of a carriage-way and a foot-way, which he used for the purpose of athletic sports, had erected a barrier across the road to prevent persons driving vehicles up to the fence surrounding his premises and overlooking the sports. In the middle of this barrier was a gap which was usually open for the passage of vehicles, but which when the sports were going on was closed by means of a pole let down across it. The defendant had no legal right to erect this barrier. Some person without his authority removed a part of this barrier armed with spikes from the carriage-way where he had placed it and put it in an upright position across the footpath. The plaintiff, on a dark night, was lawfully passing along the road on his way from one of the houses to which it led. He felt his way through the opening in the middle of the barrier, and getting on to the footpath was proceeding along it, when his eye came into contact with one of the spikes and was injured. The jury found that the *chevaux-de-frise* in the road was dangerous to the safety of the persons using it. And it was held that the defendant, having unlawfully placed a dangerous instrument in the road, was liable in respect of injuries occasioned by it to the plaintiff, who was lawfully using the road, notwithstanding the fact that the immediate cause of the accident was the intervening act of a third party in removing the dangerous instrument from the carriage-way, where the defendant had placed it, to the footpath.

As a defence it was urged that "although if the injury had resulted from the use of the *chevaux-de-frise* hurdle as placed by the defendant on the road, the defendant, on the facts as admitted or found by the jury, might have been liable; yet, as the immediate cause of the accident was not the act of the defendant but that of the person, whoever he may have been, who removed the spiked hurdle from where the defendant had fixed it and planted it across the footway, the defendant could not be held liable for an injury resulting from the act of another." But the Court rejected this defence, and gave judgment for the plaintiff, saying, "A man who unlawfully places an obstruction across either a public or private way may anticipate the removal of the obstruction by someone entitled to use the way, as a thing likely to happen; and if this should be done the probability is that the obstruction so removed will, instead of being carried away altogether, be placed somewhere near: thus, if the obstruction be to the carriage-way it will very likely be placed, as was the case here, on the footpath. If the obstruction is a dangerous one, wheresoever placed, it may, as was the case here, become a source of damage for which, should injury to an innocent party occur, the original author of the mischief should be held responsible."

Thus it will be seen that a person who commits a tortious act must take into calculation that other persons may take advantage of that act and convert it into a source of injury to third parties, for which he, the original tort-feasor, will be liable.

The student desirous of further information on the subject should read the judgment in the case of *Clark* v. *Chambers* and the cases therein cited.

PURCHASERS' COVENANTS—A SUGGESTION.

Our readers are no doubt aware of the decisions of the Courts to the effect that a restrictive covenant entered into by the purchaser of the fee in lands does not run with the land, but only binds subsequent purchasers if they have notice of it; and that an affirmative covenant by a purchaser of the fee is a purely personal covenant, and does not bind subsequent purchasers even with notice. Let us illustrate what those decisions signify by means of examples. A. sells the fee in a house and some land adjoining to B. B. enters into two covenants, one restrictive, the other affirmative—the restrictive covenant is to the effect that he, B., his heirs and assigns, will not use the house conveyed to him except for the purpose of a private dwelling-house—the affirmative covenant is to the effect that he, B., his heirs and assigns, will, within five years of the conveyance, build a shed on the piece of land conveyed of the value of 100*l*. B. sells the property to C., and the question which suggests itself to C. is, Am I bound to perform and obey these covenants entered into by B.? The answer is not difficult to give. C. has notice of the restrictive covenant not to use the premises except for the purposes of a private dwelling-house, and consequently he is bound by the covenant, and should he proceed to put the house to any other use than that of a dwelling place, A., B.'s vendor, will be able to sue him for an injunction and damages. But C., although he has notice of the affirmative covenant to build the shed, is not bound by it; and if no shed be erected within the prescribed five years, A. could have no remedy against C., but would have to proceed against B., the covenant being a purely personal one, or, as it is called, a covenant *in gross*.

Now it constantly happens that a vendor wishes to make his purchaser enter into covenants of a restrictive and affirmative character, and he naturally wishes that such covenants should bind subsequent purchasers of the property, and this whether they have notice of the covenants or not. Is there, then, no way by which the vendor's wishes can be carried out? Most certainly there is a way, and one which is occasionally adopted in practice, and this is to convey to the purchaser a long term of years, say 9,999 years, instead of the fee simple, and to make the purchaser covenant for his assigns as well as for himself. The covenants, whether restrictive or affirmative, bind all subsequent transferees of the property, for covenants so framed and entered into by a lessee for years "run with the land"—that is to say, they bind not only the covenantor and his representatives, but each successive owner of the property; and in the case supposed, had B. taken a long term of years instead of the fee simple, C. would have had to perform both covenants whether he had notice of them or not.

Why, then, it may be asked, is not this practice of giving to the purchaser a long term instead of the fee simple more commonly adopted, since it gives so much better security to the vendor that the covenants will be fulfilled? Because purchasers naturally when buying wish for the fee simple and not a mere term of years, however long it may be, and would in many cases refuse to purchase if the fee could not be secured to them, and in all cases would decline to give as much money for the term as they would have given for the fee, and so vendors make a virtue of a necessity and convey the fee, relying solely on their remedy against the purchaser if the affirmative covenants are not kept, and relying on their remedy against him and subsequent purchasers, with notice if the restrictive covenants were broken.

With these facts clearly before us—viz., that covenants in leases by the lessee concerning the land leased "run with the land," and that covenants in conveyances in fee by the purchaser do not "run with the land"—let us see how far sect. 65 of the Conveyancing Act, 1881, bears upon the question.

As our readers all know, under this section, now slightly amended by sect. 11 of the Conveyancing Act, 1882, a long term of years may be where there is no rent or no rent of money value, and no condition of re-entry, by the simple process of a declaratory deed executed by the owner, &c., of the term, converted into the fee. Now if a vendor wishes to make his purchaser enter into covenants of a restrictive and affirmative nature, he should insist on the purchaser taking a long

term of years of such a character as to make it capable of conversion under the Conveyancing Acts, and to any objection raised by the purchaser to the effect that he will not buy anything less than the fee in the lands, the vendor can point out that this fee he can obtain directly after the lease is made to him by executing a declaratory deed, and the purchaser will probably see that he runs no risk and loses nothing beyond the expense of the declaratory deed, and will fall in with the vendor's suggestion. But it may be asked, in what way does this protect the vendor? In a most material way, for it is provided by the aforesaid section (65) of the Conveyancing Act, 1881, that the fee which is created by the conversion shall be subject to the "same trusts, powers, executory limitations over, rights, equities, *covenants*, provisions, and obligations to which the term was subject." Consequently, as the purchaser's covenants run with the land, and would have bound all successive owners of the term had it not been converted, so the covenants will continue to run with the land notwithstanding the conversion, and bind all subsequent transferees whether with or without notice thereof, although, had the purchaser taken a conveyance of the fee direct from the vendor, his affirmative covenants would have been purely personal, and his restrictive covenants would not have bound subsequent transferees, unless—as would usually happen—they had notice of the covenants.

To those of our readers who desire to go fully into the question as to how far a purchaser's covenants bind subsequent owners, we would recommend a perusal of the judgments in *Kepple* v. *Bailey*, 27 Ph. 774; *Tulk* v. *Moxhay*, 50 L. J., Ch. 642; *Patman* v. *Harland*, L. R., 17 Ch. 353; *Nicol* v. *Fenning*, L. R., 19 Ch. D. 258; 51 L. J., Ch. 166; 45 L. T. 378; 50 W. R. 95; *L. & S. W. Rail. Co.* v. *Gomm*, L. R., 20 Ch. D. 562; 51 L. J., Ch. 530; 46 L. T. 549; 30 W. R. 620; *Hayward* v. *Burwash Building Society* and *Luker* v. *Dennis*, L. R., 7 Ch. D. 227; 47 L. J., Ch. 174; 37 L. T. 827; 16 W. R. 167.

STATUTES FOR STUDENTS.

(*Continued from p.* 252.)

27 Hen. 8, c. 16 (commonly known as *The Statute of Enrolments*), A.D. 1535.

Previous to the Statute.

From what appeared under a consideration of the Statute of Uses, it will be remembered that bargains and sales were allowed in Equity, previous to the Statute of Uses, for the purposes of secretly conveying the use in lands to the purchaser, and thus avoiding the notoriety connected with conveyances by feoffment; and when, by the Statute of Uses, the use was turned into the legal estate, a simple bargain and sale, accompanied with a money payment, became all that was necessary for transferring interests in lands from one person to another, and the whole fee passed without any words of limitation, as it was presumed that the purchase-money was paid for such an estate. This unlooked-for effect was never intended, the law in those days requiring that when lands changed hands the transfer should be effected in a public way, so that everyone in the neighbourhood should know the fact, and the very idea that the title to landed property should depend on a mere verbal bargain and money payment shocked our legal forefathers, and they at once took steps to remedy the evil thus caused by the Statute of Uses by procuring the passing of the statute under consideration. It provided—

Provisions of the Statute.

"That every bargain and sale of any estate of inheritance (*i. e.* fee simple or fee tail estates) or of freehold (*i. e.* life estates) should be made by deed indented and enrolled within six (lunar) months from its date in one of the Courts of Record at Westminster, or before the *custos rotulorum* and two justices of the peace, and the clerk of the peace for the county in which the lands lay, or two of them at least, whereof the clerk of the peace should be one."

Effect of the Statute.

The object of the statute, it will readily be observed, was to make all bargains and sales public documents, by requiring them to be enrolled in a public office, and thus open to everyone's inspection, and the legislators thought that they had completely prevented any secret mode by which lands could be transferred, and that, in future, corporeal hereditaments would only be capable of conveyance by feoffment with livery of seisin, or by a duly and publicly enrolled bargain and sale. The Act, however, only speaking of estates of inheritance (fee simple and fee tail estates), and of estates of freehold (life estates), a mode of evading its provisions was soon discovered by, as is supposed, Sir Francis Moore (Serjeant-at-Law); for as bargains and sales for any estate less than freeholds did not require to be enrolled, if A. wished to sell his lands to B., he bargained and sold (or leased) them for a year, for some pecuniary consideration. The bargain and sale was not within the terms of the Act just considered, and B. by virtue of his payment became at once seised in possession of the lands for the year, the possession passing to him by virtue of the Statute of Uses

without any entry, and, being in possession, he could accept a release of A.'s reversion, which was accordingly made to him by deed executed at the same time as the bargain and sale was made, but dated the day afterwards. Thus arose the practice of conveying lands by means of a *lease* (or more properly a bargain and sale) and *release*, the mode in common use, until in 1841 the necessity for the lease for a year, on which the conveyance really rested, was, by 4 & 5 Vict. c. 21, abolished, and a release made in pursuance of the Act, and known as a *statutory release*, was made as effectual as a lease and release for conveying lands. In 1845, the necessity for resorting to means for evading the notorious livery of seisin connected with feoffments was abolished, for 8 & 9 Vict. c. 106, provided that in future corporeal property, as well as incorporeal property, should *lie in grant* (*i. e.* be capable of being conveyed by a simple deed of grant) *as well as in livery* (*i. e.* as well as by feoffment with livery of seisin).

The Act did not extend to any hereditaments lying within any city, borough, or town corporate, wherein the mayors, recorders, and other officers have authority to enrol deeds.

The lease for a year referred to above was first required to be in writing by the Statute of Frauds.

It must be borne in mind that a bargain and sale can, if desired, still be used and enrolled under the statute just considered, and the advantage of conveying lands by means of a duly enrolled bargain and sale is, that an office copy of the enrolled deed is as good evidence as the original bargain and sale under the provisions of a statute passed in Queen Anne's reign (10 Anne, c. 18).

The next statute for our consideration is a very important one, as well from a practitioner's as a student's point of view. It is—

13 Eliz. c. 5 (*An Act against Fraudulent Deeds, Gifts, Alienations*).

Previous to the Statute.

It was always a rule of the common law (which was "the essence of goodness, and abhorred all kind of fraud"), that if any conveyance or assignment of property (whether real or personal) could be shown to have been made with the intention of defeating creditors, and that creditors were defeated by it, the conveyance was void, and the object of the present statute was simply to *declare* (see the words of section 1, below) what the common law was. The statute under consideration was by no means the first statute which had attempted to foil covinous transactions, for the following statutes had all been passed with that object, but their provisions were not complete: viz. 50 Edw. 3, c. 6; 2 Ric. 2, st. 2, c. 3; and 3 Hen. 7, c. 4. The Act being confirmatory only, it will be as well to proceed at once to a consideration of its provisions.

Provisions of the Statute.

Sect. 1 *declares*, *ordains*, and *enacts*, that "every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, &c., whether by writing or otherwise, and every bond, suit, judgment, and execution at any time had or made sithence the beginning of the Queen majesty's reign that now is or at any time hereafter to be had or made to or for any intent or purpose before declared and expressed, shall be from henceforth deemed (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and relief by such guileful, covinous or fraudulent devices as is aforesaid are, shall, or might be in anywise disturbed, hindered, or defrauded) to be clearly and utterly void, frustrate, and of none effect; any pretence, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding."

Sect. 2 provides that parties to the covinous feoffments, &c. shall forfeit a year's value of the lands, leases, rents, commons or profits thereof or thereout, and the whole of the goods and chattels comprised in such feoffments, and the full amount of any covinous bond, half to go to the crown, and the other half to the parties grieved, and in addition the parties shall suffer imprisonment for an half year, without bail or mainprize.

Sect. 3. This section relates to recoveries, but as these collusive proceedings were abolished in 1834, it will be sufficient to state the effect of the section, which is by no means happily or intelligently worded. The meaning of the clause, as stated by Lord Campbell in *Tarleton* v. *Liddell* (17 Q. B. 390), is, "that although the use of a fraudulent recovery shall not prevail to defraud creditors, yet the recovery shall stand good to bar those in remainder or reversion, as if there had been no fraud."

Sect. 4 is unimportant.

Sect. 5 is most important, as it materially controls the effect of sect. 1. It provides that "the Act shall not extend to any estate or interest in lands, &c. (as in section 1) lawfully had, made, conveyed, or assured upon *good considerations* and *bonâ fide* to any person or persons, or bodies politic or corporate, not having at the time of such assurance any manner of notice or knowledge of such covin, fraud, or collusion as aforesaid, anything before mentioned to the contrary notwithstanding."

(*To be continued.*)

RECENT STATUTES DONE INTO VERSE FOR THE USE OF STUDENTS.

THE MARRIED WOMEN'S PROPERTY ACT, 1882.

(Continued.)

And every woman married
Ere eighty-three's beginning,
And property acquiring,
Or any wages winning,

Whereof the title shall accrue
Since said year's first appearing,
Takes it as separate estate,
No husband interfering.

All deposits in the Post,
Or bank of any kind, sir;
Annuities, public stocks, or funds,
Showing a thrifty mind, sir;

Or any other stocks or shares,
Security or debenture,
Standing in married woman's name,
In company or venture,

Shall be her separate estate,
Transferable at pleasure;
Her husband has no say in it,
Tho' wrathful above measure.

All future transfers to the wife
(Her husband's name rejected,
And made out in her own alone)
Are likewise so protected.

To stock, etcetera, held by wives
Of every rank and station,
Jointly with others than their spouse,
Applies same regulation.

And never husband's sanction
(However keen and heedful,
To stay the wife's extravagance)
To transfers shall be needful.

If missus should investment make,
Behind the back of master,
Of his own money or estate,
'Twill be to her disaster.

For from the Court assuredly
He will, on application,
An order get for stock or shares'
Immediate restoration.

Investments in her name, or gifts
From husband's amiability,
If made to cheat his creditors,
Shall never have validity.

Wife may insure her husband's life,
And eke her own; the policy
Shall be her separate estate
(Some husbands must the folly see,

And danger). So if husband
Has his own life insurèd,
And name of wife or children
To policy procurèd

Such policy shall not belong
To his estate—no, never—
But for the wife and children
Shall form provision ever.

But if the premiums are paid
With fraudulent intention,
To cheat the husband's creditors,
'Tis needful here to mention

That total of such premiums,
When policy receivable,
To husband's creditors shall go,
In manner irretrievable.

Trustees may be appointed
By husband, and this either
In policy or by separate deed,
Or by the Court, if neither.

(To be continued.)

NOTES ON THE FINAL.

On Tuesday and Wednesday next candidates for this month's examination will be busily engaged in answering questions at the Incorporated Law Society's Hall, Chancery Lane, and those of them who aspire to Honors will have to attend at the Hall again on Friday. The hours on Tuesday and Wednesday are from 10 to 1, and from 2 to 5. On Friday they are from 10 to 1.30, and from 2.30 to 6.

With the number of advantages which students of the present day have, there is little excuse for the student who presents himself without a reasonable knowledge of his subjects; and to this fact the Law Society's Examiners appear to be keenly alive, for no one now-a-days is allowed to pass muster, unless he has been able to show on his papers an intimacy with the subject-matters involved in the questions set him.

The result of the Pass Examination will be announced in the Law Society's Hall on Friday, November 20th, and the list of successful candidates will appear in the "Times" of Saturday, November 21st. The result of the Honors Examination will be made known in the same way, but a fortnight later.

Our answers to the Final Pass Questions will be published and for sale on Thursday morning next (the day after the Examination), and our answers to the Honors questions early in next week; and these, together with the Intermediate questions and answers, will be all sent off together to our subscribers directly the Honors answers are published.

We give below some questions which are constantly being put to us, with answers thereto. We shall continue this from time to time.

Should I read a special Book on Statute Law for my Final?

We do not think a special work *necessary*,, but the student who possesses one will be saved a considerable amount of labour and time in looking up the statutes in his text book.

Can you advise me which book on Statutes to procure?
To do so would be invidious, and it does not fall within the scope of our columns.

Can I safely during my articles hold an office, all the duties of which I can discharge out of office?
Not *with safety*. Your only safe plan is to apply to the judge for an order giving you leave to hold the office. Your principal will have to give his consent, and with such consent and an affidavit showing that your office hours will not be employed with the work, the order will be readily granted you.

Do you consider Snell's Equity sufficient to cover the Equity questions at the Examination?
Snell's Equity is without doubt an excellent and extensive work, but to answer the question set out would be going farther than we feel justified in these columns.

Can you give me a list of the Examiners of the Law Society?
Certainly. We append the list.

ASSISTANT EXAMINERS OF THE LAW SOCIETY.

PRELIMINARY EXAMINATION.

Mr. C. Knight Watson.—Subjects numbered 1 to 5 (both inclusive) on p. 143 of the Law Society's Calendar for 1885; and Latin and Greek.
Mr. G. W. Fischer.—French and German.
Mr. V. Carrias.—Spanish.
Mr. P. de Asarta.—Italian.

INTERMEDIATE EXAMINATION.—Stephen's Commentaries.

Mr. T. Thorowgood.—Conveyancing, Rights of Property in Things Real. The portion of Book II. which is contained in Vol. I.
Mr. W. J. Fraser.—Personal Rights. Rights of Property in Things Personal. Rights in Private Relations, Book I., the remaining portion of Book II., and Book III.
Mr. E. R. Still.—The Study of the Law. Civil Injuries and their Remedies (being Proceedings in all divisions of the Supreme Court). The Rise, Progress and General Improvement of the Laws of England. Introduction, Book V., and Conclusion.

FINAL EXAMINATION.

Mr. G. A. Crowder.—The Principles of Law and Procedure in matters usually determined or administered in the Chancery Division of the High Court of Justice.
Mr. H. E. Gribble.—The Principles of Law and Procedure in matters usually determined or administered in the Queen's Bench Division of the High Court of Justice.
Mr. Radclyffe Walters.—The Principles of the Law of Real and Personal Property, and the Practice of Conveyancing.
Mr. Thomas Webster.—The Law and Practice of Bankruptcy.
Mr. C. O. Humphreys.—Criminal Law and Practice. Proceedings before Justices of the Peace.
Mr. J. R. F. Rogers.—The Law and Practice of the Probate, Divorce and Admiralty Division of the High Court of Justice, and Ecclesiastical Law.

HONORS EXAMINATION.

Mr. J. A. Iliffe.—The Principles of the Law of Real and Personal Property, and the Practice of Conveyancing.
Mr. V. I. Chamberlain.—The Principles of Law and Procedure in matters usually determined or administered in the Chancery Division of the High Court of Justice.
Mr. M. D. Osbaldeston.—The Principles of Law and Procedure in matters usually determined or administered in the Queen's Bench Division of the High Court of Justice, and the Law and Practice of Bankruptcy.
Mr. E. F. Turner.—The Principles of Law and Procedure in matters usually determined or administered in the Probate, Divorce and Admiralty Division of the High Court of Justice, Ecclesiastical and Criminal Law and Practice, and Proceedings before Justices of Peace.

NOTES ON THE INTERMEDIATE.

Thursday next is the day fixed for the Michaelmas Intermediate Examination, 1885. The hours at which candidates are required to attend are between 10 a.m. and 2 p.m., and between 3 p.m. and 5 p.m.

In the morning two papers are handed to candidates, each containing ten questions. Paper No. 1 is on Book II. Part I., and Paper No. 2 on Book II. Part II., and Book III. In the afternoon one paper of ten questions is handed out. These questions are taken from Book V. and the Introduction in Vol. I., and the Conclusion in Vol. IV.

Those about to present themselves for the Examination would do well to observe the hints given in the Appendix to the Guide; by so doing many a mark may be secured which would otherwise be lost.

The result of the Examination will be made known by advertisement in the "Times" newspaper of Saturday, Nov. 21. It will also be announced in the Law Society's Hall on Friday afternoon, Nov. 20; but no formal notice will be sent to the candidates, as formerly.

Our answers to the Examination questions will be published and for sale on the morning after the Examination (*i. e.* on Friday next), and will be sent off with the Final and Honors answers to our subscribers early next week. The day fixed for the Hilary Examination, 1886, is Thursday, January 14th, and notices may be given on or before December 14th.

"MEMS. ON STEPHEN."

(*Continued.*)

How a Title by Forfeiture may arise.

(1) By conveyance of lands to a corporation, contrary to the provisions of the early Mortmain Acts.

(2) By disclaimer, actual or virtual.

(3) With regard to copyholds, by the tenant breaking some custom of the manor.

(4) With regard to leaseholds, by the tenant breaking some covenant in his lease, and so enabling the landlord to enter under the condition of re-entry (if one). This forfeiture, however, can now in most cases be relieved against under sect. 14 of the Conveyancing Act, 1881.

The meaning of "Mortmain."

It signifies "dead hand," and was applied in early days to conveyances of land to a corporation—since, as a corporation has a perpetual existence, the feudal services which accrued to the lord on death were not rendered, and, so far as the lord was concerned, the lands were in a dead hand.

The Provisions of the early Mortmain Acts.

To protect the feudal lords these statutes (7 Edw. 1, c. 1, 13 Edw. 1, c. 32, and 13 Rich. 2, c. 5) enacted that lands should not directly or indirectly, by means of a use, be conveyed to corporations, whether aggregate or sole, ecclesiastical or lay, unless the Crown's licence to hold lands was first obtained by the corporation, and if conveyed without such licence the lands should be forfeited.

The object of the more recent Mortmain Act.

The statute (9 Geo. 2, c. 36) had quite a different object in view. It aimed merely at preventing lands being conveyed *by will* to charitable uses.

How can Lands be conveyed to Charitable Uses?

Only *by deed* executed twelve months before the death of the donor, attested by two credible witnesses, and enrolled in Chancery within six months of execution.

The effect of conveying Lands contrary to 9 Geo. 2, c. 36.

The conveyance does not cause a forfeiture of the property, but is merely void, and the grantor or his representatives are entitled to the lands just as if the conveyance had not been executed.

The exceptions to 9 Geo. 2, c. 36.

(1) Gifts to the two Universities (Oxford and Cambridge), or to any of their colleges.

(2) Gifts to the colleges of Eton, Winchester and Westminster.

(3) Gifts to the British Museum, the Greenwich Hospital, the Foundling Hospital, the Royal Naval Asylum, and Seamen's Hospital Society.

In these cases lands may be given by deed or will, without any additional formalities beyond those required in conveying lands to an individual.

Can a Charity purchase Lands?

Certainly; but the formalities of 9 Geo. 2, c. 36, must be complied with, that is, the conveyance must be by deed, duly attested and enrolled. But it will not become void by the grantor's death within twelve months, as it would if the charity had taken as volunteers.

The tortious operation of a Feoffment.

Prior to 8 & 9 Vict. c. 106, if A., tenant for life or years of lands of which B. was the reversioner, conveyed by feoffment the lands to C. in fee simple, the first result of the feoffment was to give C. an estate in fee simple *by wrong*. But as B. was able to recover the lands from C., the ultimate result of a feoffment by a tenant for life for a larger estate than he had in the property was to cause a *forfeiture* of the particular estate. But had A. been tenant in tail of the land, then his feoffment in fee simple would have simply caused a *discontinuance* of the estate tail, and enabled his issue, on A.'s death, to enter upon the lands, but until they did so C. *by wrong* was entitled to the fee simple.

No tortious operation at the present Time.

By 8 & 9 Vict. c. 106, it is provided that a feoffment shall not have a "tortious operation." In other words a feoffment now operates "innocently," and will only pass that estate which the feoffor has power to convey, and consequently, in the cases given, C. would only take an estate for the life of A., and when A. died C.'s fee would determine.

NOTES ON THE PRELIMINARY.

The days fixed for the Examinations for 1886 are February 10th and 11th, May 5th and 6th, July 7th and 8th, and October 20th and 21st.

The subjects selected for the February Examination are:—

1. Writing from dictation.
2. Writing a short English composition.

3. Arithmetic—the first four rules, simple and compound; the rule of three; and decimal and vulgar fractions.
4. Geography of Europe, and History of England.
5. Latin—Elementary.
6. (1) Latin. (2) Greek, Ancient. (3) French. (4) German. (5) Spanish. (6) Italian.

The following are the books in which Candidates will be examined in the subjects numbered 6 at the above-mentioned Examination:—

In Latin.—Cicero, Pro Cluentio; *or* Terence, Adelphi.

In Greek.—Herodotus, Book I., Ch. 1—100.

In French.—Zeller, Richelieu; *or* Voltaire, Le Fanatisme.

In German.—G. Freytag, Der Staat Friedrichs des Grossen; *or* Goethe, Hermann und Dorothea.

In Spanish.—Cervantes, Don Quixote, cap. xxxi. to lii. both inclusive; *or* Moratin, La Mojigata.

In Italian.—Beccaria, Trattato dei Delitti e delle Pene; *or* Dante's Inferno, Cantos 1—10, and Gallenga's English and Italian Grammar.

With reference to the subjects numbered 6, each Candidate will be examined in *two languages according to his selection*. Candidates will have the choice of *either* of the above-mentioned works in the two selected languages. The subjects are published five months before each Examination.

The subjects for the English Composition selected for the October Examination this year were:—

Write an Essay or Letter on one of the following subjects:—

1. Ireland. 2. Mountains. 3. No man is a hero to his valet de chambre. 4. The plot of one of Shakespeare's plays. 5. Music. 6. Your favourite book.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements expressed or made.*]

Answers to Correspondents.

Apex.—(1) Certainly, if he reads wisely and well. (2) Yes, if read with the leading conveyancing cases. (3) The Act itself and the Rules and the cases should be first read, and then Ringwood's Bankruptcy taken up.

Discipulus.—April, 1887.

Diligent Reader.—June, 1886.

E. Gordon Callender.—Thanks.

W. E. Sturdy.—See our answer to A. B. Pilling in Law Notes for October, 1885.

W. H. Blears.—Certainly not. This is one of the exceptions to the rule that special damage must be proved.

G. L. G.—The Act of 1870 applies to salaries, but not, we think, to servants' wages; but, as far as we know, no judicial opinion has been expressed on the point. If this is so, the master in the case you state is only bound to pay the servant wages up to the end of the previous month.

Separate Use.—There is no decided case on the meaning of sect. 23 of the Married Women's Property Act, 1882, but we conceive that the husband will be entitled to the personal property of his wife if she dies intestate as to it.

Alpha.—This point has been decided (see *Barlow* v. *Teal*, 4 Law Notes, p. 204), and six months' notice suffices.

Cowes.—An ante-nuptial settlement of furniture is expressly excepted from the Bills of Sale Act, 1878, and so no registration is needed.

A. Aldington.—We have come to the conclusion that it is somewhat invidious, and therefore undesirable, to give a list in these columns. If you will make out your own list and send it to us, we will tell you if it will do.

J. F. Edell.—Most certainly the will must be proved.

A. L. Rowland.—(1) It certainly ought to be. (2) No necessity for this. (3) Thanks. Yes.

R. L. Jervis.—Very sorry, but we can only answer through these columns. Your list will do if you substitute Snell's Equity for the one you have. The Student's Conveyancing should be amply sufficient in Practical Conveyancing. The other assistance you ask for cannot be given through the medium of this paper.

S. H. L.—Thanks. There is some doubt on the point we admit; and, perhaps, our General Note was too strong.

F. F. Edell.—If the parties cannot agree, a jury must set out by metes and bounds one-third of the lands. In fixing the portion the widow is entitled to, regard is had to the yearly value of the lands.

H. O. Hayman.—Thanks. We call attention once more to the matter in our General Notes this month.

W. Raby.—We hope to do this soon. Thanks for the suggestion.

Lex.—(*Kirton in Lonsdale.*) We can find no case on the point you sent us last month. On ordinary principles we consider that the executor would be liable.

H. B.—For the last five words in the eighth line and the first word in the seventh line from the bottom of the page you refer to, *read* "without ever having been married;" and for the last two words in the

xth line and the first two in the fifth line from the ottom, *read* "not being married at his death."

J. L. W.—This list should suffice if you add to it me book on practical conveyancing. Certainly the erk may study at home in such a case, for he has erved his time.

F. J. P.—Yes, in June, 1887.

Omega.—We have no doubt that the conclusions ou draw are correct.

Hotchpot.—Thanks. Yes, this ought to appear, nd we will think of it when editing a new edition.

C. P. Robinson.—Thanks.

Tom Jones.—The Student's Conveyancing and hallis.

York, J. A. L., A Subscriber, R. P. Howell, H. Morris, P. W. F., J. E. S. and Justinian.—'e regret very much that we are unable to give ou answers to your queries, but for the most part ey are on abstruse points of law, and are more ted for the searching out by, and opinion of, counsel an to be answered in the columns of a law paper.

G. L. Haslehurst.—(1) Yes. See *Mander* v. *arris* (3 Law Notes, p. 228), where a will made be- re 1st January, 1883, testator dying after that date, as allowed to operate partially as if testator had own of the change in the law effected by the Act.) There is no time given in the rules; but we think would have to be made within twenty-one days. wo clear days would be necessary and sufficient.

A. L. Rowland.—(1) Certainly; but this is not irable. (2) This we do not know. He would be tified in appointing him executor.

Correspondents' Letters.

the Editor of the "Law Notes."

The Honors Examination.

Sir,—In common with "Rectus in Curiâ," and st other students, I think that this examination ould be made a more popular one. I fail to see, rever, that the wearing of a hood or other dis- guished badge by those who pass it would have s result.

The Honors Examination is undoubtedly a difficult , and the man who passes it should be more suit- y rewarded than at present; but the licence to ar a hood and flaunt it in the faces of his less suc- ful, though it may be equally learned, brethren, ot a reward that will find favour in the eyes of English law student. I can imagine how nervous awkward a man might feel on his first appear- e in Court decked with this distinguishing mark onour and advertisement of ability, how ready hoodless opponent would be to trip him up and se his inexperience on the first possible oppor- tunity, and how rejoiced his professional brethren would be at his discomfiture.

Granted, however, that it is allowable and in keeping with good taste for an honorsman to singularize himself by the wearing of a distinguishing badge, and that it is to his advantage to do so. What is to become of an honorsman who on admission does not practise advocacy and never enters a Court? How is he to proclaim to the public that he has passed the Honors Examination? How is he to raise himself from obscurity, the *seemingly* inevitable doom of all honorsmen at present? Must he sit in Court for an hour or two every day arrayed in his "hood or other similar distinguishing mark of honour"?

Surely not; and yet this is his only means of keeping pace with his brother honorsmen who practise advocacy. Here, then, is a flaw in the proposed system—it would benefit advocates only, and would not be of universal advantage.

If it be desirable that successful candidates at this examination should be "earmarked," a better proposal would be to allow them to place certain letters after their names. This would be an advertisement common to all of them. But, Sir, I do not think that honorsmen wish for any "distinguishing" system of reward, a system which could not in any form do them much good, and must of necessity render them at once obnoxious and ridiculous in the eyes of the rest of the profession.

As I have already said, however, a student who passes this examination should receive something more than the slight recognition which is now his reward. "E. G. C." has proposed the giving of books of the value of two guineas, and one guinea to second and third class men respectively.

The suggested value of these prizes is not great, yet "half a loaf is better than no bread," and one of them, in addition to a certificate, would be more acceptable than a certificate alone. "E. G. C.'s" other suggestion, viz. that honorsmen should be made free life members of the Incorporated Law Society, lacks feasibility; but, even if practicable, I do not believe it would meet with the approval of students. In my opinion one great, yet inexpensive, step towards making this examination popular will be taken when, if ever, second and third class men are classified in order of merit. However, be that as it may, I am certain that I express the feelings of the majority of ordinary passmen when I say that they would treat with contempt any endeavour on the part of honorsmen to further their own interests by the wearing of a distinguishing badge; and I am equally confident that I interpret the sentiments of most honorsmen in asserting that they are content to depend for professional success on their learning and ability, without having recourse to any personal decoration insulting to their brethren and unworthy of their profession.

R. P. G.

To the Editor of the "Law Notes."

THE HONORS EXAMINATION.

Sir,—In reply to "E. G. C.," the hood, supposing the "reward" to take this form, might be of black velvet for instance, or something similar, the object in view being to adequately mark the wearer as an honorsman with minimum ostensibility, and this would, I can scarcely think be termed "swagger."

Your correspondent "E. G. C." says that "there should be something more tangible, useful, or ornamental given than the present meagre certificate." I do not see that a 1*l.* 1*s.*, or even a 2*l.* 2*s.* book could be more "tangible" than the certificate, which he so despises and in fact prefers its case; it might possibly be more useful (*i. e.*, supposing the successful candidate to be willing to desecrate the result of *quinque annorum lucubrationes*, by putting it to common use), but then its utility must necessarily be of a very limited character; and lastly, as ornamental or as "something to show," the certificate would in my opinion be far preferable. Then fancy giving an honorsman a book value 1*l.* 1*s.*, and "E. G. C." seriously tells us that this is one of the only two ways which struck him by which honors would be more sought after! Why, when one thinks of the entry fee, it sounds like "the third man to save his stakes."

"E. G. C.'s" second suggestion, with regard to membership of the Society, is, I think, a very good one, but has the objection that it would entail somethlng tantamount to a diminishing of the funds of which, as he says, the Council seem desperately frightened, for they would lose the possible subscriptions of all honorsmen. There seems to be no doubt but that there is considerable room for improvement in the existing mode of rewarding successful candidates at this examination, and the idea contained in my first letter is, I think, though rather novel, perhaps worthy of consideration.

RECTUS IN CURIÂ.

REVIEW.

The Laws concerning Religious Worship, also Mortmain and Charitable Uses. By JOHN JENKINS, Esq., District Registrar of the High Court of Justice.—Now that, according to the Conservatives, Disestablishment of the Church is within measurable distance, a special book on the Laws of Religious Worship comes very appropriately. The whole of the first chapter, extending over some 90 pages, is practically a most interesting treatise on that ever interesting subject, the growth of the relationship of Church and State. From the middle ages, through each successive reign, does Mr. Jenkins conduct us skilfully explaining the various statutes on the subject. We are always struck with wonder that the reign of Charles II. produced the Lord's Day Observance Act; the notes and cases on this statute, while being good, might have contained some fuller reference to some of the recent curious cases we have from time to time noted, but we must confess it contains some outside points as to service of orders, &c., we have not seen before.

The second chapter, on the Law of Mortmain and Charitable Uses, is also excellent, and travels over ground we have never yet seen touched in any ordinary text book on the subject: but of the whole book we prefer Chapter I., which, as we have already said, treats ably and exhaustively of the history of the connection between Church and State, and should be read by all interested in the subject. The book has an excellent table of contents, is well got up, and is published by Messrs. WATERLOW & SONS, Birchin Lane.

LAW STUDENTS' DEBATING SOCIETIES.

LANCASTER LAW STUDENTS' SOCIETY.

The fourth general meeting of the present session of this Society was held at the Law Library, Castle Hill, on Wednesday evening, October 14th, when the chair was occupied by J. W. Marshall, Esq., solicitor. After the general business had been transacted the following case was argued:—

A., who died in 1826, by his will dated in 1823, gave his property to trustees, upon trust for his wife for her life, and after her death upon trust to divide the same equally between his brother's children, with a proviso that in case any of the children "shall have died leaving issue such issue shall take equally between them the share which their parent would have taken if living." The testator's brother had three children who survived the testator, and also had had one other child who had died in the year 1802, leaving A. B. his only child. Does A. B. take anything under the testator's will?

Messrs. Clark, Lambert and Knowles argued in favour of the affirmative; whilst the negative contention was supported by Messrs. Welch, Webster, Holden and Tilly. After the openers had replied the chairman summed up and gave his judgment for the negative. A vote of thanks to Mr. Marshall for his kindness in presiding closed the meeting.

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Law Notes.

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SOME NOTES.

WITH this Number we again have the pleasure to present our subscribers with Digest of Cases, List of Cases, and General Index. We have endeavoured to make these as perfect as possible: the Digest now contains more cross-references, and any important cases which may have been mentioned only in "Some Notes." In the List of Cases we have given references to all the Reports as far as possible; some few cases have not been reported at all, others will appear in time. To make the references as complete as possible, we propose later on to issue a Supplementary Reference List, as we did last time.

We would remind our readers of the practical utility of the List of Cases: it contains references to all three sets of Reports; they can, therefore, with ease refer to any case they may require. Not every lawyer subscribes to all three reports, but every lawyer takes in one or other of the different series. Sometimes, of course, one series does not contain a case reported by the other two; here, our List of Cases comes in most usefully: it will enable the possessor of the neglectful Report to ascertain where the case appears, and either borrow it from a friend, or go to his law society's library.

Our supporters will no doubt be surprised to learn that next year we intend to return to our coloured Wrapper. It will be remembered that our chief object in abandoning it last year was to lessen the weight of the Magazine, bring it within the half-penny postage rate, and, with the money thus saved in postage, present our subscribers with all the Supplements gratis, and give them also at the end of each year a good Digest, List of Cases, and General Index. Well, we believed this could be done without prejudicing it either in matter or appearance. We think we may fairly claim that in matter the Magazine has not during the past year suffered, and we are encouraged in this thought by the fact that not a single complaint on this score has reached us; but as to appearance we were mistaken; we cannot, and do not, claim for a moment that it has not suffered in appearance, for we have received during the past year so many complaints from subscribers as to outward appearance, and, more particularly, as to the small margin. This cutting down the margin to reduce the weight struck us as the most serious fault, and determined us that some alteration was needed. To keep within the half-penny rate, either the margin, we were advised, must still be cut down, or the pages must be fewer, and smaller type used. Neither course commended itself to us. At the same time, to double our postage expenses, already very heavy, was a serious question, more particularly after having given our subscribers advantages on the strength of reducing those expenses—advantages which, of course, we cannot, nor do we desire to, withdraw. We have, therefore, after careful consideration, determined to face the increased expense. In so doing, we shall, we believe, be acting in our own interests, as well as our subscribers'. We cannot keep within the half-penny rate; we shall therefore return to our distinctive coloured Wrapper, add to the advertisement space, and add also four pages to the text, which, with the alteration in the type, will give our readers in future much more matter than they have hitherto had.

Subscribers for the ensuing year will possibly notice the advantages they will possess over non-subscribers. They will be entitled to all the supplements *gratis;* to the Digest, List of Cases, and General Index gratis; and we have now made arrangements to telegraph to any subscriber the result of his examination *gratis*. We must add that to obtain these advantages the subscription must be sent to us *direct*, so that the name appears on our subscription list. Non-subscribers will in future have to pay for a copy of the Digest of Cases, but not, of course, for the General Index or List of Cases.

We may be pardoned calling attention to the fact that without a single exception our Supplements, containing the full and correct answers to the Final and Intermediate Questions, have since the publication of the "Law Notes" been published and for sale in Chancery Lane between 9 and 10 on the mornings after the Examinations, and the Honors Answers have been published and for sale early in the week following the Examination day (Friday).

As any one, who has any knowledge of the nature and number of the questions now set at the Law Society's Examinations, will know, this result can only be obtained at great labour and expense.

We shall next year, as heretofore, bring out the Final and Intermediate Answers on the morning after each Examination, so that they can be purchased at 9 o'clock in Chancery Lane; and we hope to bring out the Honors Answers also on the morning after the Examination, that is, on Saturday, instead of, as heretofore, on the Monday following; and, by this means, our subscribers will get all the answers sooner than they have hitherto done—indeed, almost immediately after each Examination.

It certainly is, as several papers have lately pointed out, a monstrous thing that a novelist in order to prevent some one dramatising his novel should be compelled to dramatise it himself, and go to the expense of a stage representation to protect his copyright before he publishes the novel. The law on this point is certainly ridiculous, and needs immediate amendment. The stage representation is in many cases a simple farce, even although the adapted novel is a tragedy. The novelist naturally does not want too many people to see the stage representation; the piece is accordingly produced at an out-of-the-way

theatre, at an awkward time of the day, and at prohibitory prices; we heard of a case in which 5*l.* 5*s.* per stall was charged, and *returned* a few days after. We scarcely fancy a judge would hold this to be a public representation.

Playing at sweethearts is not always a paying amusement; but according to the evidence adduced in the inquiry as to Mrs. Swanborough's bankruptcy Miss Minnie Palmer seems to have made a pretty good thing out of the play "My Sweetheart." Miss Palmer, it seems, was to have half the gross receipts and Swanboroughs the other half and to pay all expenses. Miss Palmer & Co. walked off with 4,500*l.*, leaving Swanboroughs the other 4,500*l.* to meet expenses of about 5,200*l.* What curious things come out in a court of law!

However strongly a judge may feel on the point, we question the desirability of his telling the defendant in open Court that he is a liar and a perjurer. The defendant not unnaturally said, "You're another!" for which he was promptly committed for seven days. Now, with all due deference, we fancy the judge of the Croydon County Court would have done better to have kept his own counsel as to the defendant's veracity or want of veracity, and to have suggested to the proper authorities the necessity for perjury proceedings. Of course the man deserves seven days for cheeking the judge; still, it must be irritating to be publicly called "a liar and a perjurer," unless, of course, one is a solicitor! for then it should be expected.

We suppose some few people will be warned by Mr. Montgomery's case. Surely the public should know by this time that *advertising* stockbrokers are in reality not stockbrokers at all; that is to say, not members of the Stock Exchange, for members are, by the rules of "the house," strictly forbidden from advertising, and in the event of disobedience to the rule would be suspended. The case in which Mr. Montgomery figured as plaintiff should certainly have the effect of considerably curtailing the "business" of the defendant, one of these advertising stockbrokers. The action was for non-delivery of shares which had risen from 1*s.* 3*d.* to 6*l.* The defendant, one Cronmire, carrying on business as "Harrison & Co.," pleaded infancy, and pleaded it successfully. Surely it is bad enough to be tempted to lose one's money by these "stockbrokers;" but in the event of success, to be met with a plea of infancy reminds one forcibly of backing a winner and finding "bookie" *non est* when wanted. Another aspect of this curious case: these men, although not members of the "house," are still entitled to call themselves "stockbrokers." They are sworn brokers of the City of London. Now what right have the city officials to allow infants to be sworn brokers? High time indeed is it for this right to be taken away. The statute depriving the city of this right, passed a few sessions ago, comes into operation next year, we believe. None too soon.

The "Albany Law Journal" tells us that in *James* v. *State* it has just been decided that selling pools on horse races and keeping pool rooms do not constitute a "gambling table" within a statute which declares that "all games, devices or contrivances at which any money or other thing shall be bet or wagered shall be deemed a gaming table." Six judges heard the case. We do not wonder the judges were a bit troubled: just look at the statute—how can a "game, device or contrivance" be a "gaming table." On the one hand if a device or contrivance at which money is bet or wagered is a gaming table why should not a horse and a racecourse, surely a contrivance for gaming, be a "gaming table"? On the other hand, how can a racecourse be a table? But have the Americans no general Gaming and Wagering Act? Apparently not—for one of the judges said that the game of chance is the obnoxious transaction the statute seeks to prevent. Well, is not horse-racing a game of chance? Certainly not, says the cynic, it is all too well arranged beforehand for any element of chance to be left in it. At any rate one thing is settled, a horse is not a "gaming table"!

As far as we can make out from the case of *City of Chicago* v. *Keefe*, reported by the "Albany Law Journal," it seems that a city may be sued by "a child rolling hoop" for an injury suffered by reason of a defect in a sidewalk. "Rolling hoop" out there does not appear to be unlawful unless forbidden by municipal ordinance; in this case the practice had not been forbidden; the child was therefore passing lawfully along the highway, and for the injury received by defect in the "sidewalk" (Anglicè, pavement) had the right to recover damages. Well, we suppose as a decision it is all right; the same view no doubt would be taken over here: but what a nation they are! imagine a hoop-rolling youngster, or rather, we suppose, his next friend, suing the City of Chicago for damages for such a cause.

Apparently the Americans are not quite satisfied with the existing system of lawyers acting both as counsel and solicitors. At least, we gather this from an article in the Albany Law Journal, entitled "Is it expedient to have a Class of Counsel?" which we take it is tantamount to asking whether the English system of a division of labour is not better. The division of labour, the writer apparently thinks, is an irresistible principle of social science; and the present fusion of different duties in one individual results in "an indescribable confusion in the administration of justice which permeates the entire fabric of the state." Well, that is a broad and wholesale charge to bring against the system. It is, indeed, strange that the Americans should contemplate for a

moment the adoption of a system the old country is beginning to seriously question.

One portion of the article is really very funny. It is a severe and well-merited rebuke to the fanatics who object to the change simply because the system is English. The writer says, "that a division of legal labour takes place in England is true, but there are other economic principles which also obtain in England, and which we do not repudiate for that reason;" and further, he is kind enough to admit "that we do not repudiate the common speech for which we are beholden to the ancient rulers of this land." No, cousin of the boundless West, you do not, but you do alter it just a little bit. However, we can forgive all that when he tells us that with all our material faults, and we have many, we are still the Greeks of modern civilization.

Footballers may be happy. The case of *Eley* v. *Lytle*, decided the other day, shows that they cannot be convicted under 24 & 25 Vict. c. 24, for doing malicious injury to grass by playing football on it. We do not mean to say the owner of the down-trodden grass has no remedy: he can sue in the County Court for trespass; but not, most distinctly not, said the Divisional Court, obtain a conviction, there is no intent to destroy.

A useful moral may be drawn from *Bunch* v. *Great Western Rail. Co.!* Do not entrust your handbag to a porter to take charge of whilst you get your ticket, for if you do and it is lost then the company are not liable, as it was not entrusted to them as common carriers; their risk and liability in fact had not commenced. Your bailment, in fact, was to the porter; was the porter in this case a gratuitous bailee? we forgot, "no gratuities allowed." Evidently for some purposes a porter is not the servant of the company, otherwise how about our old friend "*Qui facit per alium*," &c.

And yet another railway case, *Welch* v. *London and North Western Rail. Co.!* Plaintiff got a porter to look after his bag for an hour; when he wanted it, not unnaturally, it could not be found; the Court had no hesitation in saying that it had never been entrusted to the company at all; the bailment again in this case was to the porter. Now, we suppose we must be wrong somewhere, only common sense seems to say that the first decision was wrong and this second one correct; why is this? In principle they are identical. Principles certainly do not seem to fit the facts of every case.

We do not wonder the London and Manchester Insurance Co. thought fit to dispute Mr. Groggan's claim. He was in the policy described as residing at Manchester. At the time of effecting the policy he was resident there; but he ordinarily resided in Ireland. This being so the company resisted the claim on the ground of untrue statement. The Divisional Court thought the statement as to residence did not matter. But surely there is as much difference between living in Manchester and Ireland as there is between sitting in your own arm-chair and sitting on the safety valve of a Mississippi steamer.

We never thought a man struggling to satisfy his personal ambition was "fulfilling a public duty." However it must be so. The judges have lately, as a matter of course, adjourned cases on the ground that the "leaders" were absent "fulfilling public duties." We live in a polite world, when struggling and politically lying to get into parliament is called "fulfilling a public duty." We wonder what the clients think: rather have their counsel attending to their proper duties we should say. Our respect for candidates is increased now we know they are fulfilling a public duty, and not merely trying to get "M.P." after their names.

Now, then, is there any truth in that letter of a solicitor to "Truth," alleging a job on the part of the Lord Chancellor in connection with some appointments in chambers. If the allegation is untrue the writer ought to be—well we do not say what—"something to do with boiling oil," as the Mikado says; if the charge can be substantiated, well then—however, we know all about *scandalum magnatum*, and shall hold our peace.

The election cases we have collected in another column. After-dinner speakers returning thanks for the Army must remember; in future they must not glory in the Army knowing nothing in politics: "theirs is but to obey, and lead where duty calls, &c." If the Government ever has to go to the country on the question of "war or no war"? there is very little doubt which way the military vote will go.

This franchise is a funny business. We should have thought an undergraduate more capable of voting than some of the agriculturists. Perhaps Parliament thought so too, but then Parliament is very like a woman, talks a lot and generally ends by saying the reverse of what it meant.

The Lord Mayor certainly could not have expected the fatherly lecture he received from the Lord Chief Justice. Instead of the usual complimentary phrases his Lordship administered a gilded pill. The quiet way in which, whilst lauding the Corporation for its generosity, hospitality, &c., his Lordship contrived to remind the Lord Mayor that the population in the City is small, in rateable value by no means the largest of the many neighbouring hamlets which

have sprung up around it, must have been extremely entertaining for all but the Lord Mayor and the City officials. We must admit that Lord Coleridge allows his politics to show a little too much sometimes.

The Lord Chancellor's speech at the Guildhall contained a good deal of very sound Conservatism. His Lordship laid down grandiose but elementary principles of the law of property generally. One thing in his Lordship's speech struck us as incorrect. The specious word "convey," his Lordship said, in the mind of Antient Pistol, and in the mind of Lincoln's Inn, conveys two very different ideas. Is there really very much distinction between Antient Pistol's ideas as to that word and those of eminent counsel who pocket fees for cases they cannot attend to?

The Americans appear very sore with us that we did not make as much fuss with Chief Justice Waite as they did with Lord Chief Justice Coleridge. They are a little bit unreasonable. Chief Justice Waite chose to visit England when all the lawyers were absent holiday making. Moreover, the name of Waite, honoured as it is in America, is scarcely known in England; we are so self-absorbed we really do not take enough notice of the celebrities of other countries.

Did anyone read the Royal Proclamation dissolving Parliament. It really did one good after the flood of Radical speeches one has to wade through lately. We particularly admire the sentence "And We, being desirous and resolved as soon as may be to meet Our People and to have their advice in Parliament, do hereby make known to all our loving subjects Our Royal Will and Pleasure to call a new Parliament." We confess to a sneaking admiration for this pompous old form of proclamation, particularly when we know it all means nothing at all, thanks to the struggles of our ancestors.

We fear the most damaging evidence against Mr. Stead's peculiar method of reforming the world is the testimony of the judges on assizes. They have been testifying over and over again that the practical result of the agitation is an enormous increase in that particular class of crime. The judges have certainly no interest one way or the other; the fact that they feel bound to testify on the subject is most damaging to the cause of Stead and Booth.

We certainly think that Mr. Stead has got off cheaply. We give him all credit for the "*mens rea*," but he evidently allowed himself to be fooled by an abandoned woman. His gullibility and carelessness in not substantiating his statements before issuing them to the world cannot be too strongly censured.

According to the "Solicitors' Journal" seventeen solicitors were candidates for Parliament. We shall await with curiosity the result of all the polls, to see how many succeed. Eight Conservatives and nine Liberals would appear to show that the profession is pretty equally divided in its political opinions. In the last Parliament our profession had only six members.

So Mrs. Weldon has won another case: 1,000*l.* damages against Sir Henry De Bathe, and costs, which she was careful to ask for. How many eccentric persons at the present moment owe their freedom solely to the fierce light of criticism which Mrs. Weldon and her cases have brought to bear on the undue signing of lunacy certificates. The new Parliament will have to tackle the lunacy laws as soon as they have recovered their own heads after the excitement of elections.

We should like to know that functionary at Odessa who, called on to decide to which of two men a certain burial ground belonged, took time to consider, and then held to him who died first. Mind, we don't vouch for this little story ourselves, we saw it in the "Globe." Wonderful paper for stories! Here is another. A photographer sued an actress for the price of a portrait. The lady said it was not good-looking enough; but she did not appear in Court. The judge pathetically enquired, "How can I then judge?"

In this country, in some extraordinary way or other, we always seem to prosecute the wrong people. An unfortunate stationer at Glasgow the other day was sentenced to fourteen days' imprisonment for selling the "Freethinker." All very proper, no doubt, but why not prosecute the editor and publisher; surely they deserve punishment more than a mere agent

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Does anyone know the difference between an English and a Norwegian trout? Some fishmongers at Leeds swore that they thought certain trout exposed for sale in their shops were Norwegian trout, and that, being Norwegian trout, they might expose them for sale during close time. They stuck to this so strongly that they got off with a small fine. Now we rather think that those fishmongers will in future display a perfectly wonderful knowledge in distinguishing English or Norwegian trout, or we should advise them, if they wish to be quite safe, not to expose trout for sale at all during close time.

We fancy lots of people would confide portraits of their ancestors to fine art publishers for custody, if they could make sure of getting 50*l.* for each portrait afterwards, as compensation for loss. In *Powell* v. *Graves & Son* the plaintiff gave a portrait of an ancestor to defendants to keep; someway or other it got lost, and plaintiff sued for damages. Mr. Graves, it seems, had given 4*l.* or 5*l.* for it, and presented it

to Mr. Powell, and there was serious doubt as to its authenticity. A question arose as to whether at the time the portrait was alleged to be painted wigs were worn—which elicited from Mr. Justice Grove the plaintive remark that since that time everybody had abandoned wigs except the judges: surely Mr. Justice Grove does not want to sit in his ordinary garb, like an American judge, with a toothpick in his mouth, his hands in his pockets, and his feet on the desk?

CASES OF THE MONTH.

[N.B.—The references at the heads of the cases to T., W. N. S. J., L. J. and L. T. are respectively made to Vol. II. of the Times Law Reports, the Weekly Notes for 1885, Vol. XXX. of the Solicitors' Journal, Vol. XX. of the Law Journal, and Vol. LXXX. of the Law Times, where fuller reports of the cases may be found.]

I.—ELECTION CASES.

[These cases should be entered in whatever work on Election Law the reader happens to possess.]

Has an industrial trainer of a workhouse, having rooms set apart for him in the same house as that in which the master of the workhouse lives, the right to vote under the Franchise Act, 1884?

Adams v. Ford.

(T. 19; S. J. 31; L. T. 4.)

The master of the workhouse kept the keys of the house, and the trainer was not allowed out after 9 p.m.; and it was therefore contended that the trainer could have no right to vote, as his superior resided in the same house. The Divisional Court, however, held that the master was not "the person under whom the trainer served," since he had no power to dismiss or suspend him, but merely to report him to the authorities—the guardians. The trainer occupied a "dwelling-house" within the meaning of the Franchise Act, for that word was satisfied by part of a dwelling-house, of which the claimant for a vote had sole and exclusive possession. Consequently we answer our question in the affirmative.

Can a soldier vote under the Franchise Act, 1884?

Atkinson v. Collard.

(T. 40; W. N. 197; S. J. 30; L. T. 27.)

The applicant to be placed on the list of voters was a sergeant who, in connection with his service as sergeant, had occupied two rooms in the cavalry barracks for the required period. Superior officers had the power and the duty to enter into these oroms for the purpose of inspection and keeping roder, but, subject to this, the rooms belonged exclusively to the sergeant. Superior officers occupied rooms in the same block of buildings. The Divisional Court held that the sergeant was, under the circumstances, entitled to vote. The fact that the crown was not mentioned in the Franchise Act, 1884, did not affect the question. If, however, the claimant had been absent upon military duty at a considerable distance from his quarters for twenty-one days during the year, then, unless it is shown that he could have obtained leave to return to his quarters for the night, he would not be entitled to be registered. This was so decided in *Ford* v. *Elmsley*, S. J. 30; L. T. 28.

Has an inmate of an almshouse established for poor persons unable to support themselves a right to vote under the Franchise Acts?

Baker v. The Town Clerk of Monmouth.

(T. 22; S. J. 31; L. T. 4.)

The Divisional Court said the mere receipt of eleemosynary bounty did not necessarily disqualify a person for voting purposes, but if persons in receipt of alms were by such receipt alone kept from parochial relief they were disqualified as being in receipt of alms within the 36th clause of the Reform Act; and therefore a negative answer is afforded to our question.

If a voter's description on the register is erroneous, and he seeks to rectify it by tendering a declaration under 41 & 42 *Vict. c.* 26, *s.* 24, *can the declaration be received if sent after the time allowed by sect.* 30 *of the Redistribution of Seats Act*, 1885?

Daking v. Fraser.

(T. 35; L. J. 164.)

The Divisional Court held that the omission to send the declaration within the proper time was fatal to it; and so our question is answered in the negative.

Dashwood v. Ayles.
Minifie v. Banger and Others.

(T. 51, 52; W. N. 185, 189; L. T. 23, 24; L. J. 166.)

These cases relate to the power of the revising barrister to amend the qualification in the register, and thus entitle a person to vote who, under the originally stated qualification, would not be so entitled. In the former case A.'s qualification was described in the nature of qualification (3rd) column as "tenement and garden," and in the description of qualifying property (4th) column as "part of

bailiff's tenement." It was shown that A. had occupied a dwelling-house and garden of the annual value of less than 10*l.* The barrister amended the list by striking out the words "and garden" and prefixing the word "dwelling-house," and by this means allowed the vote. The Divisional Court reversed the barrister's decision, but gave leave to appeal; and the Court of Appeal held that the amendment of the register was good, and that the vote must be allowed. The amendment was not an alteration of the description of the qualification, but a change of the description of the qualification made merely for the purpose of more clearly and accurately defining the same.

In the second case, in the third column A.'s qualification was described as "tenement and garden," and in the fourth column the description of the qualifying property was stated to be "School Yard,"—a local description of the tenement. The revising barrister amended the register by altering "tenement" into "dwelling-house." The Divisional Court held that the barrister had no power to make such an amendment, but gave leave to appeal; and the Court of Appeal held that the amendment was properly made, as the revising barrister might have come to the conclusion that "tenement" meant a dwelling-house. The vote was in the end allowed.

Where a person appears before a revising barrister for a voter, is it necessary that he be personally instructed by the voter for whom he appears?

Ford v. Smerdon.

(T. 13.)

Personal instructions from the voter are not necessary; but the Divisional Court had great doubt whether any person might appear without any authority from the voter. The Registration Act expressly allows the voter to appear before the revising barrister either by himself or by "some person on his behalf."

Has a revising barrister power under sect. 28 *of* 41 *&* 42 *Vict. c.* 26, *to amend a voter's description of qualification in such a way as to change that description, in a case where the voter has made no declaration of the correct nature of his qualification, which, by sect.* 24 *of the same Act, he is able to do?*

Foskett v. Kaufmann.

(T. 45; W. N. 188; S. J. 31; L. T. 22; L. J. 166.)

The Court of Appeal held that the revising barrister has no such power, owing to the terms of subsect. 13 of sect. 28.

A., a military officer, occupied a room in a block of buildings called "Officers' Quarters." A superior officer also occupied quarters in the same block. And an officer of further superior rank occupied a house within the barracks. Has A. the right to be placed on the register of voters?

Lowry v. Collard.

(T. 30; L. T. 24.)

The Divisional Court, reversing the decision of the revising barrister, decided that the officer in question was entitled to be registered, as his room was separately occupied as a "dwelling house," of which he had the sole and exclusive use, and was not in the occupation of any person under whom he served.

Has an able-bodied man who receives money from guardians of the poor for work which was not remunerative, and was given in the nature of relief, a right to vote?

Maggarel v. The Overseers of Whitehaven and Preston Quarter.

(T. 19; L. T. 4.)

The Divisional Court decided that such a person was clearly not able to vote, as he was "in receipt of parochial relief." The remuneration the claimant received was given, not for the value of his work, but on account of his distress, and so he could not be allowed to vote.

Has a shop assistant who occupies a furnished bed-room in a dwelling-house belonging to his employers, but not inhabited by any person under whom he serves, a right to vote?

Stubbing v. Halse.

(T. 24; S. J. 31; L. T. 9.)

He has; for his case falls within sect. 3 of the Franchise Act, 1884. So held by the Divisional Court in the above case, where it appeared that the claimant and some of his fellow shopmen each had a separate furnished bed-room in a house belonging to his employers (none of whom resided in the house), and in which there was a sitting or dining-room in which the claimant and others had meals in common, such meals being provided by the employers.

Has an undergraduate of one of the Universities a vote?

Tanner v. Smart; Tanner v. Carter.

(T. 20; S. J. 31.)

The disqualification of undergraduates has been removed by the recent Act, and they are now subject to the general law of the land, and as by that law an unbroken residence for a year is necessary to give a person the right to be placed on the register of voters, it follows that if, as in the above case, by the rules of the college an undergraduate is not permitted to reside in or visit his rooms during vacations, his name cannot be entered on the register. The question we have given, therefore, turns upon the point whether the undergraduate is or is not an inhabitant occupier for a year.

Are the proprietors of the London Stock Exchange entitled to vote in respect of lands vested in trustees in such a way that the proprietors have no equitable interest in the land itself, but only in the profits made by the use of the land?

Watson v. Black; Frisby v. Black.

(T. 36; L. T. 42; L. J. 168.)

This question was of vast importance, as there are no less than 1,040 proprietors of the Stock Exchange. The Divisional Court held that the vote could not be allowed, since the proprietors had under the deed of settlement no interest in the land, either legal or equitable.

Does the omission of overseers to sign and publish lists of claims in proper time invalidate a claimant's right to vote?

Wells v. Stanforth.

(T. 33; S. J. 31; L. J. 164; L. T. 6.)

It does not, decided the Divisional Court in confirmation of the revising barrister's decision. Coleridge, L. C. J., said that if it were held that by such omission the voter's right to vote was gone, most disastrous consequences might ensue, as the overseers would have it in their power to disfranchise any number of voters by the omission.

II.—GENERAL CASES.

[The references under Fisher, Prideaux, Snell, Aids, Shirley, Indermaur, Goodeve, Wms. R. P., Wms. P. P., Tudor, and Student's Conveyancing, refer respectively to the last editions of Fisher's Digest, Prideaux's Conveyancing, Snell's Principles of Equity, Aids to Equity, Shirley's Common Law Cases, Indermaur's Common Law Principles, Goodeve's Modern Law of Real Property, Williams' Real Property, Williams' Personal Property, Tudor's Conveyancing Cases, and Gibson & McLean's Student's Conveyancing, and indicate the page at which a note of the decision should be entered.]

A. and B., father and son, are in partnership. B. dies. B.'s estate is administered by the Court, and C., a creditor of the firm of A. and B., proves his debt against B.'s estate. A. subsequently dies, and C., his debt not being fully paid, seeks to obtain payment from A.'s estate, by administering the estate in the Court. Will he succeed?

Beckett & Co. v. Ramsdale.

(T. 73; S. J. 61.)

Yes, as a creditor of a partnership has, on the death of a partner, a concurrent remedy against the surviving partner, and also against the estate of the deceased partner, and C. might pursue which remedy he liked first. But the Court of Appeal said, as partnership creditors are not allowed to come into competition with the separate creditors of the partner, C.'s claim to dividends out of A.'s estate must be postponed until the separate creditors had been paid.

If A., a manufacturer of goods, send some of his goods to B. on approbation, and B. pledges them with C., can A. recover the goods from C., on the ground that they were not sold to B.?

Blackensee v. Blaiberg.

(T. 36.)

He cannot do so, since the non-return of the goods by B. was equivalent to an approval of the goods by him, and there was, as B. had been informed of the price, a contract for sale of the goods to B. A.'s remedy, therefore, was to sue B. for the price.

Can a surviving partner give a valid security on the partnership assets for a past debt of the firm?

Bradford Banking Co. v. Cave.

(T. 75; W. N. 197; L. T. 41.)

North, J., decided that he can do so.
(Student's Conveyancing, p. 486.)

If, on dissolution of partnership between solicitors, one partner takes with him documents relating to an estate of which he is executor, and on which the firm have a lien for costs, is the lien thereby lost?

Carter v. Carter, Re Carter.

(W. N. 184; S. J. 30; L. T. 8.)

Kay, J., said that the lien was not lost, any more than it would have been had the executor been a stranger, and walked into the offices of the firm, and taken possession of the papers without the firm's consent; and the fact that the debt was statute-barred did not prevent the firm raising their claim to the documents.

After dissolution of partnership, can the partners use the old name of the firm?

Chappell v. Griffith.

(T. 58; W. N. 190.)

A. and B. dissolved partnership in a business carried on by them as Chappell, Son & Griffith. The agreement for dissolution was silent as to the goodwill of the business. After the dissolution A. carried on business as "Chappell & Son," and B. carried on business as "Chappell & Griffith." A. applied for an injunction to restrain B. from carrying on business under that style; but it was held that B. had a perfect right to use the old firm's name.

(Student's Conveyancing, p. 188.)

Illustration of an "acceleration" of interest.

Clark v. Randall.

(T. 53; W. N. 190; L. T. 27; L. J. 167.)

A. by his will gave to his wife a life interest in his real and personal property, and subject thereto gave the same to his children. And the testator directed that if any of his children predeceased his wife leaving children the latter should take their share. The husband of one of the testator's daughters (who had children) was an attesting witness to the will.

Bacon, V.-C., held that, as by sect. 15 of the Wills Act the daughter could not take any share of the testator's estate, the will must be read as if her name had been blotted out by the testator, and that, therefore, her children's interest was accelerated, and they took their mother's share at once.

Is a bill of sale of household furniture which contain (1) a term that the grantor shall replace chattels that should be worn out by other articles of equal value, and (2) a term allowing the grantee to retain out of the sale moneys of the goods the costs of discharging any distress, execution, or other incumbrance on the chattels, and of their removal, warehousing, valuing or sale, good or void as not being in conformity with the form given in the Bills of Sale Act, 1882?

Consolidated Credit and Mortgage Corporation v. Gosney.

(W. N. 192.)

Such a bill is good, decided the Queen's Bench Division, since the clauses referred to related either to the maintenance or the defeasance of the security, and were substantially in conformity with the statutory form.

(Student's Conveyancing, p. 262, and as a note to sect. 9 of the Bills of Sale Act, 1882.)

If the well-hole in a staircase is of extraordinary size, and by reason thereof a workman is injured, can he sue the employer under sect. 1 (sub-s. 1) of the Employers' Liability Act, 1880?

Conway v. Clemence.

(T. 80.)

In other words, would this constitute a defect in the works or plant connected with the business of the employer? The facts were these: The plaintiff Conway was employed by the defendant, he was ordered to go to the basement of a house in the course of erection, and when in the basement was injured by a brick falling through the well-hole of the staircase. This well-hole in the lower part of the course was left open to a width of 10 feet, while it had been contracted to 4 feet in the upper floor, and if this contraction had been continued all down the brick would not have fallen and the plaintiff's injury would not have happened. The Court held that the plaintiff had no right of action, and so our question is answered in the negative.

(As a note to sect. 1 of 43 & 44 Vict. c. 42.)

What must be the nature of a pauper's residence in a parish in order that he may acquire a settlement therein under sect. 34 of 39 & 40 Vict. c. 61?

Dorchester Union v. Weymouth Union.

(T. 56; L. J. 168; L. T. 43.)

Under this section three years' residence without relief is required, and in order that the residence

may render the pauper irremovable the Divisional Court, in the above case, held that the residence without relief must be for a continuous period of three years.

Is the custom of auctioneers on the sale of large properties to accept a cheque in lieu of cash in payment of the deposit a reasonable and proper one?

Farrer v. Hartland, Lacy & Co.

(T. 11; W. N. 182; L. J. 165; L. T. 7.)

Most certainly it is, and consequently a fiduciary vendor is justified in allowing the auctioneer to thus receive the deposit, and if the cheque is dishonoured and the sale thereby goes off he would be entitled to be paid the costs and expenses of the abortive sale. This was so held by the Court of Appeal in the above case, where a mortgagee selling under his power received for the deposit a cheque for 1,000*l.* from A., who alleged that he bought for B. The cheque was dishonoured, and B. repudiated the agency, and so the sale went off; and the Court held that the mortgagee was able to add the expenses of the sale to his mortgage money.

(Student's Conveyancing, p. 67.)

Will the Court order a solicitor to deliver up papers to his client before taxation of costs?

Galland, Re.

(W. N. 185; S. J. 29; L. J. 160.)

Yes, upon payment of a proper sum into Court to meet the solicitor's costs, but only in a case where special circumstances exist—circumstances which show a pressing necessity for the papers. Such an order was made in the above case, where there were numerous conveyances, the completion of which was necessary for the undertaking of the company, and which could not be proceeded with without the delivery over of the documents required.

A. is tenant for life under a will of a residue of personalty directed to be laid out in the purchase of land, subject to a direction for accumulation of the income for the period of twenty years, the accumulated income being applied in the improvement of the land. Is A. a tenant for life under the Settled Land Act, 1882?

Hickley v. Strangways.

(W. N. 191; L. T. 27; S. J. 44; L. J. 167.)

Chitty, J. said, that A. could not in such a case be said to be a tenant for life within the meaning of sect. 58, sub-s. 6. A. was not in any sense of the word in possession of the property, and possession seemed to be, said the learned judge, the qualification required by the Act to enable limited owners to put its powers into force. A. could not, therefore, exercise any of the statutory powers until after the twenty years directed for accumulation had expired.

(Student's Conveyancing, p. 372, and as a note to sect. 51, sub-s. 6, in books on the Settled Land Acts.)

If in a partition action between tenants in common the Court orders a sale of the property, the plaintiff's solicitor having the conduct of the sale, and the defendants employing a separate solicitor, the costs being directed to come out of the proceeds, ought the taxing-master to allow two sets of costs, one to the plaintiff's solicitor, and the other to the defendants' solicitor?

Humphreys v. Jones.

(S. J. 6.)

Bacon, V.-C., considered that under the Solicitors' Remuneration Act and Orders the master ought to allow one set of costs only, and that regulated by the scale given in Schedule I. The judges of the Court of Appeal, however, were unanimous in holding that the costs of the defendants' solicitor must be allowed as well as those of the plaintiff's solicitor. Baggallay, L. J., pointed out that as decided in *Stamford* v. *Roberts* (L. R., 26 Ch. D. 155), the Remuneration Order applied to sales under the direction of the Court, and that, while the plaintiff's solicitor was entitled to costs according to the scale fees of Schedule I., Part I., the defendants' solicitor was entitled to costs according to the old system as allowed by Schedule II. Under the old practice two sets of costs would have been allowed, and there was nothing in the Act or Order to alter the former practice. So an affirmative answer is afforded to our question.

(Student's Conveyancing, p. 513.)

What constitutes a "fair price" within the meaning of sect. 45 of the Agricultural Holdings Act, 1883?

London and Yorkshire Bank v. Belton.

(S. J. 42.)

Under this section live stock belonging to another person taken in by the tenant of a holding to which the Act applies, to be fed "*at a fair*

price" to be paid by the owner of the animals to the tenant, are privileged from distress if there is other sufficient distress on the premises. In the above case A. seized three cows belonging to B. for rent due from his tenant C. These cattle had been put on to C.'s farm by B. under an agreement that C. was to feed them and that in return he was to be entitled to the milk obtained from them. B. insisted that the cattle were protected from A.'s distress under the 45th section of the Act of 1883; and the question we have set out arose, viz.: Did C. pay a "fair price" for the agistment of his cattle? The County Court judge decided that he did, and the Divisional Court confirmed the decision, though not without some hesitancy. "The word 'price' does not always or necessarily mean 'money,'" said Coleridge, L. C. J., "nor does a 'fair price' mean an adequate amount of coin of the realm. It means a fair equivalent for what a man gets." What C. received was a fair equivalent for feeding the cattle, and so, there being other sufficient distress, A. ought not to have seized B.'s cattle.

(Student's Conveyancing, p. 314, and as a note to sect. 45 in books on the Act.)

Does Mandeville's case *apply to estates in fee simple?*

Moore v. Simkin.

(W. N. 186; S. J. 27; L. T. 26.)

By marriage settlement made in 1810, real estate belonging to A. B. as to part as heiress to her mother, C. D., and as to the rest as heiress of her maternal uncle, was limited to the use of the husband for life, remainder to the use of the wife for life, with remainder to the issue of the marriage, with an ultimate limitation to the use of the right heirs of A. B. for ever. A. B. died in 1846, and her husband in 1871. In 1880 the surviving child of the marriage died intestate and a bachelor; and the question arose, Who was entitled to the property under the ultimate limitation? The plaintiff, who was the heir-at-law of A. B.'s mother, urged that under *Mandeville's case* A. B. took under the marriage settlement as a purchaser, but that on her death descent must be traced *ex parte paternâ;* and that, therefore, he took the whole of the settled property. The Court held, however, that the case in question only applied to an estate in tail or in conditional fee, and not to an estate in fee simple; and that, therefore, the descent was not broken, but must be traced from A. B.'s mother and uncle.

A. enters into an engagement with B., a tailor in Regent Street, to serve him as a cutter and fitter of wearing apparel; and A. agrees that on the determination of his engagement he will not carry on the business of a tailor within a circuit of ten miles from Charing Cross for a period of three years from such termination. Is such a covenant good?

Nicoll v. Beere.

(T. 11; L. T. 8.)

Kay, J., held that it was perfectly good, and restrained A. from breaking the covenant. The agreement was not unreasonable either in point of space or of time, looking to the nature of B.'s business.

(As a note to the leading case, *Mitchell* v. *Reynolds*, in book on Common Law Cases.)

A. devised his real estate to his son (A.) and his heirs, and then declared that in case his said son should die without leaving lawful issue, then and in such case "the estate hereinbefore devised to him shall go to his next heir at law," to whom the testator gave and devised the same accordingly. A. agreed to sell the fee simple to B. B. refused to complete on the ground that A.'s estate was defeasible on his dying without issue. Will the Court compel B. to complete?

Parry v. Daggs, Re.

(W. N. 193; S. J. 43; L. J. 169; L. T. 41.)

Bacon, V.-C., held, and the Court of Appeal confirmed his decision, that B. must complete. A. took the absolute fee, and the gift over was void, as it had in view the placing of a fetter on A.'s power of alienation during his lifetime.

(Student's Conveyancing, p. 460, and as a note to *Bradley* v. *Peixoto* in the leading Conveyancing Cases.)

If A. employs B. as his clerk at a salary which ultimately reached 2,000l. a year, and A. discovers that B. is largely engaged in gambling transactions on the Stock Exchonge, can A. dismiss B. without notice and without compensation?

Pearce v. Foster and Others.

(T. 76.)

He can do so, since such conduct on B.'s part amounts to moral misconduct; and though it was not misconduct in connection with A.'s business, yet it was such as to justify dismissal. Grove, J., said that what B., the plaintiff, had done was from

a business point of view much stronger than mere moral misconduct.

(In book on Contracts, chapter on Master and Servant.)

Bill of sale or not?

Preece v. Gilling.

(T. 79; L. T. 42.)

A. bought certain goods from B. for 200*l.* A. took a receipt for the money, the receipt stating that the money was "for the whole of the goods now on the premises." The receipt was not registered as a bill of sale. A. shortly afterwards removed the goods, and warehoused them. Later on A. placed the goods into another house, which she let to B. furnished. Judgment having been obtained against B., the goods referred to were seized. A. put in her claim to the goods. The judgment creditor urged that A.'s claim could not be supported, as the receipt was a bill of sale under the Act of 1878, and not being registered, and the goods being in the grantor's apparent possession at the time of execution, was void as against him the execution creditor. On the authority of *Marsden* v. *Meadows* (L. R., 7 Q. B.) the Divisional Court held that the receipt was not a bill of sale, as the sale was complete before it was given. And even if it were a bill of sale, as possession had been taken *bonâ fide* before execution, A. was entitled to the goods.

(Student's Conveyancing, p. 248; and as a note to sect. 17 of the Bills of Sale Act, 1878.)

Can a new trustee be appointed under sect. 31 *of the Conveyancing Act*, 1881, *when an infant is appointed trustee?.*

Tallatire's Trusts, Re.

(W. N. 191; L. T. 26.)

Under this section a new trustee may appointed when (*inter alia*) a trustee is "incapable" of acting in the trusts. Was infancy an "incapacity" within the meaning of the section? Pearson, J., said that the Act did not apply to the case of an incapacity which the settlor knew of, and here the testator himself appointed an infant trustee. Under the circumstances Pearson, J., appointed a new trustee to act jointly with the two adult trustees, without prejudice to the infant's right to apply on his attaining twenty-one to be re-appointed trustee.

(Student's Conveyancing, p. 348; and as a note to the section in books on the Conveyancing Act.)

Can a purchaser recover interest which he has paid on his purchase-money owing to the purchase not being completed at the time named if he subsequently discovers that the delay arose through the wilful default of the vendor?

Young and Harston, Re.

(W. N. 195; S. J. 61.)

The Court of Appeal decided that he can do so. Here the purchaser discovered that most of the delay arose from the fact of the vendor going to Switzerland for a holiday, and this the Court considered wilful default, and ordered so much of the interest as had been paid for the delay thus caused to be repaid to the purchaser.

(Student's Conveyancing, p. 317.)

III.—PRACTICE CASES.

[N.B.—The references under Student's Practice are made to the 3rd edition of Gibson and McLean's Student's Practice of the Courts. Those of our readers who have any other book on Practice should enter up the same under the order and rule quoted.]

Can the Court order a defendant to pay money into Court on an admission made by him?

Borrett v. White.

(S. J. 62.)

This can be done under Ord. XXXII. r. 6, even though the admission was made, not on the pleadings nor in the course of the action, but before action brought. And it would in such a case be sufficient to show the admission if the plaintiff made an affidavit that the money was in the defendant's hands, and that the defendant had not answered the affidavit. In thus deciding the Court of Appeal followed *Freeman* v. *Cox* (L. R., 8 Ch. D. 148).

(Student's Practice, p. 164; Ord. XXXII. r. 6.)

If a judge in the exercise of his discretion refuses to commit a person for contempt of Court does an appeal lie to the Court of Appeal?

Bristow v. Smith.

(T. 36; S. J. 30.)

Yes, such an appeal lies, but following the judgment in *Jarmain* v. *Chatterton* (L. R., 20 Ch. D. 493), Baggallay, L. J., said that while entertaining the appeal the Court would be slow to alter the decision in the Court below.

(Student's Practice, p. 35; Ord. LVIII.)

In an action for the price of goods sold and delivered is the plaintiff entitled to an order for inspection of the contract for sale in the defendant's possession without first depositing security for costs under Ord. XXXI. r. 26?

Brown v. Liell.

(T. 4.)

The Divisional Court (Mathew and Smith, JJ.) held that he was. Mathew, J., said that the new rules, that is, the Judicature Rules, as to discovery and inspection do not apply in the case of documents in which the parties had a common interest, but the old practice prevails. The defendant was, as it were, a trustee with regard to the contract for sale, and was bound to show it to the plaintiff, and there could be no reason why the latter should be made to deposit 5*l.* before being allowed inspection.

(Student's Practice, p. 188; Ord. XXXI. r. 26.)

A. sues B. for specific performance of a contract for a lease. B. admits the contract, and counter-claims for rent. A. admits the counter-claim, and issue is joined. B. subsequently (i. e., *some months after, and after notice of trial given*) *applies for leave to add to his counter-claim a claim to recover the lands from A. for breach of covenant. Will the Court give him leave to amend his counter-claim, with this object in view?*

Clark v. Wray.

(S. J. 44; L. T. 26)

Bacon, V.-C., refused leave. The defendant sought to raise an entirely new and inconsistent case; and after the cause was set down for hearing, leave to amend would not be given, unless there were some very special circumstances, which did not appear in this case.

(Student's Practice, p. 169; Ord. XVIII. r. 2.)

Can a judge of the Queen's Bench Division order a writ of attachment to issue against a respondent for disobeying an order made against him in a suit in the Divorce Court?

Cook v. Cook.

(T. 10.)

The Divisional Court held that there was no jurisdiction in the Queen's Bench Division in respect of such an order. The matter rests solely in the jurisdiction of the Divorce Court.

(Student's Practice, p. 255; Ord. XLIV. r. 4.)

Must a trustee in bankruptcy, who is suing as such trustee, find security for costs if it is shown that he is insolvent?

Cowell v. Taylor.

(W. N. 183; S. J. 5; L. T. 439.)

In *Pooley's Trusts* v. *Whetham* (L. R., 28 Ch. D. 38; 33 W. R. 423), Pearson, J., intimated his opinion that an insolvent trustee in bankruptcy ought to be ordered to give security for costs; and there is a *dictum* of Blackburn, J., in *Malcolm* v. *Hodgkinson* (L. R., 8 Q. B. 209) to the same effect. These *dicta* were, however, opposed to *Denton* v. *Ashton* (L. R., 4 Q. B. 590) and to *United Ports Co.* v. *Hill* (L. R., 5 Q. B. 395); and the Court of Appeal held that security ought not to be ordered. Bowen, L. J., said that poverty was no bar to the right to sue: the doors of the temple of justice were open to all. So a negative answer is given to our question.

(Student's Practice, p. 115; Ord. LXV. r. 6.)

If a foreclosure action is brought in the High Court, when the mortgage is for a small sum, say 65l., will the costs be taxed on the High Court or County Court scale?

Crozier v. Dowsett.

(W. N. 190; L. J. 158.)

Bacon, V. C., in the above case, ordered that the plaintiff should only be allowed the same costs as if he had brought his action in the County Court.

(Gibson & McLean's Practice, p. 269; Ord. LXV. r. 1.)

Will the Court compel a foreigner who usually resides abroad, but happens to be here at the time of bringing an action, to give security for costs, if it is shown that he is at the date of the application in prison undergoing imprisonment under a conviction of misdemeanor?

Dupont v. Crook and others.

(T. 49.)

No security will be required in such a case, decided the Divisional Court, though Smith, J., said it would have been very reasonable to require security from the plaintiff as he was in gaol, if the Court could have seen its way to do so; but the authorities were against such an order being made.

(Student's Practice, p. 114; Ord. LXV. r. 6.)

When a writ has been served out of the jurisdiction of the Court, will the Court accept a certificate made by the process server showing the service instead of the affidavit of service?

Ford v. Mieske.

(W. N. 198; S. J. 63; L. T. 43.)

In this case a writ was served on a defendant in Germany, and the original writ was returned to England with a certificate endorsed showing that the writ had been served. This certificate was signed and sealed by the process server—a German subject—and attested by a notary. The reason of there being no affidavit of service appeared to be that the Foreign Office has directed the British consuls in Germany not to administer oaths to German subjects. The Divisional Court refused to accept the certificate, and said that the process server in such a case should have been accompanied by a British subject, when serving the writ; the British subject might then have made the required affidavit.

(Student's Practice, p. 92; Ord. XIII. r. 2.)

If a taxing master, under the discretion allowed him by the Rules, on taxation allows the costs of three counsel, will the Court interfere with the exercise of the discretion?

Le May v. Welch.

(S. J. 6; L. T. 440.)

It was urged, on the authority of *Pearce* v. *Lindsay* (1 D. F. & J. 573), that the Court only ought to interfere when there was something overwhelming to show that the taxing master was wrong; but Pearson, J., held that the Court must use its own judgment whether the case was of such a nature as to justify the allowance for three counsel; and in the above case where, as the learned judge said, the decision depended on a comparison of some exhibits of collars the master ought not to have allowed for three counsel, and having done so the exercise of his discretion must be interfered with, and two counsel only allowed for. Compare with *Kirkwood* v. *Webster* (9 Ch. D. 239), where it was said that on taxation between party and party three counsel must be allowed for only where it is a case in which a prudent man would have employed three.

(Student's Practice, p. 272; Ord. LXV. r. 47.)

Within what time must an appeal be made from an order made in an administration action for payment out of a fund of certain costs and for payment of creditors whose claims had been allowed?

Lewis v. Lewis, Lewis, Re.

(W. N. 185; S. J. 27.)

In other words, is such an order final or interlocutory? Chitty, J., considered that, although the order was of a final character, yet, for the purposes of appeal, it must be regarded as an interlocutory order, and so be appealed from within twenty-one days.

(Student's Practice, p. 280; Ord. LVIII. r. 15.)

Can the Court hear a case in camerâ *against the wish of one of the parties?*

Mellor v. Thompson.

(S. J. 64.)

That this can be done (1) in matters affecting wards of Court, (2) in matters affecting lunatics, and (3) in matters in the Divorce Division, is well settled. The above case fell within none of these classes, but, on the assurance of counsel for the respondent that the case was one which ought to be heard in private, the Court of Appeal made an order that it be so heard, notwithstanding the appellant's counsel insisted on a hearing in open Court. The facts on which the Court made this order were as follows:—Smith, J., on a hearing *in camerâ*, restrained the defendant from disclosing certain matters which had been communicated to him by a client. The defendant appealed, and the respondent's counsel asked that the appeal be heard *in camerâ*, on the ground that, if heard in open Court, the matters sought to be kept secret would be disclosed, and the very object of the application would be defeated. The appellant's counsel objected, and claimed that the case be heard in open Court.

Can the Court of Appeal, under sect. 7 of the Bankers' Books Evidence Act, 1879, order the inspection of bankers' books?

Neath Harbour Smelting and Rolling Works Limited, Re.

(S. J. 26; L. T. 8.)

The Court of Appeal decided this question in the affirmative.

Is the granting of a commission to take the evidence of a witness who is out of the realm a matter of indulgence or of right?

Sheppard v. Dalbiac.

(S. J. 46; L. T. 26.)

The granting of a commission is in the Court's discretion, but if applied for in proper time the order is usually made. In the above case the application was made a long time after notice of trial, and Kay, J., said that the granting it at so late a stage was a matter of indulgence, and as a condition to granting the order directed the applicant to give security for the costs of the commission.

(Student's Practice, p. 206; Ord. XXXVII. r. 6.)

In taxing the costs of the hearing of an appeal in the Court of Appeal has the taxing master a discretion to allow refreshers to counsel in a case where the appeal lasts more than one day and no oral evidence is taken in the Court of Appeal?

Svendsen & Co. v. Wallace.

(T. 48; L. T. 42.)

It was urged that, in *Harrison* v. *Wearing* (L. R., 11 Ch. D. 200), the late Sir G. Jessel, M.R., had laid it down that whenever the evidence in the Court of Appeal was all written no refreshers should be given. The Divisional Court, however, held that there was no such rule, but that the master had a discretion to say what refreshers and what amounts should be allowed.

(Student's Practice, p. 272.)

Can a party to an Admiralty action in rem *entered for trial at the assizes insist on having the case tried before a jury?*

"The Temple Bar."

(W. N. 195; L. J. 170.)

He cannot so insist, since, this being an action which, before the Judicature Acts, could, without the consent of the parties, have been tried without a jury, Ord. XXXVI. r. 4 did not apply, but the trial must take place without a jury unless the Court in its discretion thought fit to allow a jury.

(Student's Practice, p. 224; Ord. XXXVI. rr. 4—7.)

Where judgment has been obtained against the plaintiff by reason of his non-appearance at the trial, must the application to set aside such judgment be made within six days under Ord. XXXVI. r. 33, *or has the judge discretion to hear the application at a later date under Ord. XXVII. r.* 15?

Walker v. James.

(L. J. 160.)

North, J., held that the application must be made within the six days after trial, the case being governed by Ord. XXXVI. r. 33.

(Student's Practice, p. 233; Ord. XXXVI. r. 33.)

Willis v. Duncan.

(L. J. 160.)

In this case North, J., said that the recent applications for adjournments had been so numerous that he felt a difficulty in allowing actions to stand over until a certain date, and therefore, in order to preserve the cause list from further confusion he should henceforth direct that all postponed actions go to the foot of the existing list.

IV.—BANKRUPTCY CASES.

[The references under Robson, Y.-Lee, Williams, Ringwood and Baldwin are made respectively to the last editions of Robson's, Yate-Lee's, Williams', Ringwood's and Baldwin's Bankruptcy. Those of our readers who possess some other book on the Bankruptcy Act and Rules thereto should enter the case as a note to the section or rule mentioned.]

If a person pays money to a trustee in bankruptcy under a mistake of law, and the trustee pays it away in dividends, can the money be recovered back by the payer out of assets which may subsequently come to the trustee's hands?

Carnac, deceased, Re, Simmonds, Ex parte.

(T. 18; W. N. 182; S. J. 29; L. T. 7.)

The trustees of Sir J. R. Carnac's settlement, labouring under a mistaken notion of the law applicable to the terms of the settlement, made such a payment; and the Court of Appeal decided the question we have above set out in the affirmative. The Master of the Rolls said, that the Court would not do a shabby thing, viz., take advantage of an error in law. The trustee was an officer of the Court, and would not be allowed to do that which the Court would not itself do, namely, retain the money. This case affords an exception to the rule, that when a man makes a mistake in a point of law he can get no relief.

If A., second mortgagee of Whiteacre, belonging to B., at B.'s request consent to postpone his charge until a further advance made by C., the first mortgagee, is discharged out of the property, is A. entitled to prove on the bankruptcy of B. for any loss he may sustain by reason of the postponement of the charge?

Chappell, Re; Ford, Ex parte.

(W. N. 183; S. J. 29.)

In the above case C. sold the property, and it did not realise sufficient to pay off his first mortgage and further charge, and A. sought to prove against B.'s estate for the amount he would have received after payment of the first mortgage of C. had he not agreed to allow C.'s further advance to have priority over his second mortgage. There was no covenant by B. to indemnify A. for any loss he might sustain. The Court of Appeal held that A. might prove against the estate, as the Court would infer an implied promise by the bankrupt to indemnify him against any loss he might sustain.

(Sect. 37.)

If a bankrupt has a life interest in consols, which the trustee cannot sell unless an insurance on the life of the bankrupt is effected, can the trustee compel the bankrupt to answers questions, in order that an insurance on his life may be effected?

Garnett, Re, Bullock, Ex parte.

(W. N. 192; L. T. 28.)

Cave, J., said that the trustee had no such power, and that his application for an order directing the bankrupt to answer the questions must be refused: there was no authority nor precedent for granting it. The power conferred by sect. 24 of the Bankruptcy Act, 1883, like the power conferred by sect. 19 of the Act of 1869, referred to the property, and not to the person, of the debtor.

(Robson, p. 646; Y.-Lee, p. 125; Williams, p. 77; Baldwin, p. 239; Ringwood, p. 74; sect. 24.)

Can a wife prove against her husband's estate in bankruptcy for moneys lent by her to him?

Genese, Re, District Bank, Ex parte.

(W. N. 192; L. T. 28.)

She cannot do so until after all the other creditors for value have been paid in full. (Sect. 3, M. W. P. Act, 1882.) Kay, J., said that the onus was on the wife to prove that the money had not been advanced to her husband for the purposes of his business, and not having proved this, she could not be allowed to prove against the estate.

(Robson, p. 236; Y.-Lee, p. 179; Williams, p. 110; Baldwin, p. 288; Ringwood, p. 89.)

[N.B.—In making the above remark, Kay, J., seems to have passed over the words in the section, "or otherwise," which follow the words, "for the purposes of his business," and which indicate that for whatever purpose advanced, the wife's proof is postponed until the other creditors have been paid.]

Can the drawer of a foreign bill of exchange prove against the acceptor's estate damages for re-exchange?

Gillespie Re; Robarts, Ex parte.

(S. J. 63; L. T. 43.)

Cave, J., said that however the law might have stood at one time, *Hamilton* v. *Walker* (1 De G., F. & J. 602) settled it that an action for damages for re-exchange could be maintained, and he said that there was nothing in the Act of 1882 which was in any way inconsistent with the right to sue for such damages. Consequently such damages could be proved for in the bankruptcy of the acceptor on the production of evidence that the claimant had paid or was liable to pay them.

(Robson, p. 267; Y.-Lee, p. 196; Williams, p. 117; Baldwin, p. 284; Ringwood, p. 85; sect. 37.)

If a judgment creditor present a petition against his debtor can the Court on the hearing of the petition allow the debtor *to show that there was no consideration for the debt?*

Lennox, In re, Lennox, Ex parte.

(T. 60; W. N. 189; S. J. 40; L. J. 166.)

In the above case A. had brought an action against B. as the maker of some promissory notes, and in his defence B. had alleged that there was no consideration for the notes. At the trial B. withdrew the defence, and consented to a judgment being entered against him. The judgment debt not having been paid A. took bankruptcy proceedings against B., and at the hearing of the petition B. sought to show that there was no consideration for the plaintiff's debt, and the question we have set out arose. The registrar held that B. was bound by the judgment, and could not show that

there was no consideration. But the Court of Appeal held that there was power in such a case to go behind the judgment, and if on inquiry it was found that the petitioning creditor's debt was really no debt at all, the petition must be dismissed. "The whole foundation of the power of the Court to make a man a bankrupt," said Lord Esher, "was the existence of a petitioning creditors' debt." *Ex parte Kibble* (L. R., 10 Ch. 373) was a direct authority that the Court could inquire into the validity of a judgment debt, even at the instance of the debtor himself, for, although the debtor was estopped, the judgment did not bind the Bankruptcy Court. So our question is answered in the affirmative.

(Robson, pp. 191, 296; Y.-Lee, pp. 70, 205; Williams, p. 37; Baldwin, pp. 43, 294; Ringwood, p. 26; section 7, sub-s. 3.)

If an official receiver receives proofs of debts and does not within fourteen days give notice in writing under Rule 173 *of his rejection of the proof, is the proof thereby admitted?*

Sissludy, Re, Fenton, Ex parte.

(S. J. 63.)

Cave, J., said that while the omission to reject or admit within the time allowed by the rule was a neglect of duty on his part, yet, as the admission of a proof must be in writing, there was no sufficient admission to prevent the trustee subsequently rejecting the proof; or, at any rate, the trustee could apply to the Court to expunge the proof under rule 23 of schedule 2; and so our question is answered in the negative.

(Robson, p. 229; Y.-Lee, p. 592; Williams, pp. 374, 418; Baldwin, p. 95; Ringwood, p. 175; Rule 173; Schedule 2, r. 23.)

If a hop merchant has at the time of his bankruptcy hops in his order and disposition which have been sold by him to another, will the hops pass to the trustee in bankruptcy under the reputed ownership clause of the Bankruptcy Act, 1883?

Taylor, Re, Dyer, Ex parte.

(T. 7; S. J. 6.)

It being proved that there is a custom existing in the hop trade for hops, after being purchased, to remain in the warehouse of the merchant awaiting the purchaser's order, Cave, J., had no hesitation in deciding the question we have set out in the negative; as, such a custom existing, no person would give credit to a hop merchant on the ground that all the hops in the warehouse belonged to him.

(Robson, p. 566; Y.-Lee, p. 397; Williams, p. 207; Baldwin, p. 172; Ringwood, p. 67; sect. 44.)

V.—CRIMINAL LAW.

A. is prosecuting B. for uttering a forged cheque. While B. is under remand, in respect of the preliminary inquiry before the justices, A. is informed that an alibi *as a defence will be set up by B. A., acting on counsel's opinion, still continues his prosecution, even after being advised that if B. were committed, he would be acquitted at the trial. Subsequently A. withdraws from the prosecution. Can B. successfully sue A. for malicious prosecution?*

Harrison v. National Provincial Bank of England.

(T. 70; L. T. 39.)

In other words, was A. bound, on hearing of the intended defence, to make specific inquiries as to the truth of the alleged *alibi?* The Court of Appeal decided that A. not having done so, was no proof of want of reasonable and probable cause for the prosecution; and if the other circumstances of the case justified the prosecution, B. would not be able to recover damages.

(Compare *Akalte* v. *N. E. Rail. Co.*, L. R., 11 Q. B. D. 440.)

A., under a written agreement with B., is to receive a large sum of money in the event of his obtaining a certain contract for B. During the course of negotiations with B., A. received a cheque and bill of exchange from B. A. applies the cheque and the bill contrary to written instructions of B. Is B. an agent within the meaning of sect. 75 *of* 24 *&* 25 *Vict. c.* 96?

Portugal, Re.

(T. 14; W. N. 186.)

Under this section, "any banker, merchant, broker, attorney, *or other agent,*" who, being intrusted with any direction in writing to apply money or securities in a particular way, converts the same to his own use, &c., is guilty of a misdemeanor. The question in the above case was whether A. fell within the meaning of the words "other agent;" and it was hold that he did not,

since the words must be taken to mean other agent *ejusdem generis* with banker, broker, or merchant.
(Harris, p. 237.)

What is the proper direction to the jury in a case where a father is charged with a rape upon his daughter?

Regina v. Gill.

(L. T. 27.)

Denman, J., at the Notts Autumn Assizes, said that it was in such a case proper to tell the jury that though they might rightly take into consideration the relation between father and daughter, and that they would be justified in expecting a more ready yielding on the part of the daughter and a less violent resistance than in other cases, yet if it was not made out that on the particular occasion the particular act was done against the consent of the daughter it would not be rape, unless, indeed, the daughter was under apprehension of present danger so that she dare not shriek out or resist. In such a case, therefore, while the jury may judge what kind of resistance is to be expected in the particular case there can be no rape unless there is some evidence to indicate resistance of some sort.
(Harris, p. 180.)

VI.—DIVORCE LAW.

A. petitions for a dissolution of his marriage with B. on the ground of her adultery with C. which he duly establishes. A. admits that eleven years ago he himself committed adultery which B. had condoned. Can the Court dissolve the marriage?

Grosvenor v. Grosvenor and Smith.

(T. 35; S. J. 28.)

The Court cannot do so, but must dismiss the petition. This conclusion was arrived at by Butt, J., after a consideration of the authorities, and he stated that in holding himself bound to dismiss the petition he was following *Morgan* v. *Morgan and Porter* (L. R., 1 P. & M. 644) and *McCord* v. *McCord* (L. R., 3 P. & D. 237).

Does residence alone of the petitioner in this country give the Court of Divorce jurisdiction?

Hayes v. Hayes.

(L. T. 38.)

In this case A. and B., man and wife, were both born and married in Ireland. The marriage took place in 1872. In 1880 A. and B. came to England on business. A. returned to Ireland in 1881. B. remained in England till 1883, and then returned to A. and lived with him and the children of the marriage until the end of 1884. B. then came without her husband's concurrence to England and took up her abode with her mother, and in February, 1885, presented a petition for dissolution of the marriage to the Divorce Court here, on the ground of A.'s adultery and cruelty committed in Ireland and England. It will be observed that here the domicile of A. and B. was Irish, the place of marriage was Ireland; but the offence was alleged to have been committed here, and the wife was temporarily resident here. Counsel for petitioner relied on *Niboget* v. *Niboget* (L. R., 4 P. D.), in which the *delictum* here was held to give the Court jurisdiction. Butt, J., however, held that under the circumstances the Court had no jurisdiction to hear the petition, which was consequently dismissed. B. must proceed in the Irish Court.

CURIOUS CASES.

No. 7.—Window Lifting.

Every Englishman knows—and is proud of the right too—that "his house is his castle:" not every Englishman, however proud he may be of this privilege, knows that this bulwark of liberty was secured to him by *Semayne's case*. It is, indeed, a grand and national distinctive right to be able to "sport one's oak" against all the world, to sit over one's fireside and proudly reflect that there, at least, one's right there is none to dispute, one is master of all one surveys, provided, of course, that the reflecting Briton is a bachelor, for, if not, then it goes without saying that to claim to be master in one's own house is a mere empty boast.

There can be no doubt that the reflection that one can "sport one's oak" against every one, except Her gracious Majesty, when she sends a subordinate armed with a warrant, is considerably enhanced by the remembrance that one can even shut the door in the face of the landlord when rent is in arrear, and that the landlord has no right to break into his own property in order to distrain goods in satisfaction of that rent; surely it is worth getting into arrear with rent to enjoy the proud satisfaction of making the landlord sit on the doorstep. Mr. Gilbert considered, that

when all the other temptations to belong to other nations were considered, it was greatly to a Briton's credit, and much to his merit, that he remained an Englishman; but it may be fairly asked, can any other nation offer any greater temptation than the right to bang one's door in the landlord's face?

Again and again has it been laid down that a landlord, entering on premises to distrain, must take care that he make peaceful entry and do not break in; for to break in is a serious offence, not to be tolerated, and indeed to be visited with heavy damages if the tenant choose to sue therefor.

What is a peaceful entry, what is and what is not a breaking in? These, for the distraining landlord, are points of extreme importance, and the spirits of landlords and their bailiffs will be revived by the knowledge that the most recent decision on the point is distinctly in their favour.

The facts in *Crabtree* v. *Robinson* (54 L. J., Q. B. 544), the case we are about to consider, were simple, and the point involved one that it would have been thought had long ago been settled and established. The landlord's bailiff found a window partially raised; the bailiff raised it sufficiently to admit him, and then, having gained access to the castle by stealth, proceeded to draw up the portcullis and throw down the drawbridge to the attacking forces; or in simple phraseology, he opened the front door, and landlord and myrmidons entered, seized and made prisoners of the chairs and tables; the castle was ta'en, the distress of both landlord and tenant, although of different nature, complete.

The tenant brought an action for damages for illegal distress, alleging that the raising of the window amounted to a breaking in, but the County Court judge held that such entry was not illegal, and in this opinion he was supported by the Divisional Court.

Now, strange to say, counsel were able to cite some few analogous cases, but were obliged to admit that no case had been found directly on the point. The criminal decisions as to what constitutes entry for the purpose of burglary or housebreaking were pressed into service and quoted. It was shown that in *The King* v. *Smith* it was decided that raising a window already partially open would not amount to a breaking in for the purposes of housebreaking; also in *Nash* v. *Lucas* it was held that the fact of the window being left unfastened need not give a licence to enter by the window, such entry not being the usual mode of entering a house; but this case of *Nash* v. *Lucas*, in reality, did not touch the point: the window there was down but not fastened.

We have, however, no doubt that the decision is correct: if raising a window already partially open is not an entry in a criminal offence it should not be in a civil offence, and this point appeared to most strongly influence the Court. We must, however, hint that it is a rule to usually construe facts strictly in criminal matters, that the accused may have every advantage; and when it is remembered that in distress a landlord is exercising a self-remedy without the assistance or guidance of the Court, we should almost have expected the Court to have held any unusual mode of entry to be a breaking in.

It was not strongly relied on at the trial that to raise a window closed, but not fastened, is entry in the eye of the criminal law; that so also is lifting the latch of a door or the flap of a cellar kept down by its own weight. Now there is evidently in principle something approaching very close to a contradiction in the rules that to raise a closed but unfastened window is entry, but to raise a window already partially open is not entry. Surely there is here something extremely like a quibble; one of these decisions must be erroneous; surely it would have been preferable to have established as a broad principle that the disturbance in the slightest degree of the doors, windows, fastenings, &c., from the state or position in which left by the houseowner, shall constitute a breaking in; we should then have found that the first case, raising a shut but unfastened window would fall within our definition, and that the second case, raising a window already partially open, was also a breaking in, unless of course the window had been left by the householder sufficiently open to permit the bailiff getting in without any further raising the sash, that is to say, without disturbing the state or position in which the window was left by the houseowner. Unfortunately, the Courts have not seen fit to adopt this definition of a "breaking in;" and it is still as impossible as ever to lay down any rule to guide us as to what is and what is not "a breaking in;" but if we cannot get a rule from the case, we can at least, as Barham is always so anxious to do in "Ingoldsby Legends," deduce a moral: if an Englishman wants his house to be his castle he must shut his doors and windows; he can fasten them or not as he pleases.

CASES AFFECTING ARTICLED CLERKS.

III.

How far service under Articles is excused by Illness.

By 6 & 7 Vict. c. 73, s. 3, no person can be admitted and enrolled as a solicitor unless he shall have duly served his articles. The term of service is usually five years, though in some cases it is three years, and in some cases four years. It is the duty of the Law Society to see that no clerk is examined unless he proves this service, and with a view to ascertaining whether the service has taken place some very proper questions as to service have to be answered by the master and the clerk before both Intermediate and Final Examinations.

If the answers are not satisfactory the Society will refuse to examine the clerk, and, in such a case, unless he obtains a judge's order, he cannot be examined.

The question arises, Will the answers be deemed unsatisfactory if they show that the clerk has not, during a certain portion of his articles, been able to serve his master owing to illness? Will the Law Society, in such a case, be justified in requiring that the period during which the clerk was ill be served over again? There is no fixed rule, we believe, on this point, but generally the Law Society, if the articled clerk is furnished with proper medical testimony, are willing to allow in all six months for illness. So that if the answers show that the clerk has, during his articles, been absent for say eighteen months, the Law Society would probably only require an additional service of twelve months, thus allowing six months for the illness.

But the Law Society is not bound to thus act; and should the Law Society compel the clerk to re-serve the whole of his time, or if the clerk is dissatisfied with the period allowed him by the Society, the clerk's only remedy is to apply to the Court for an order that the Law Society examine him without re-serving any portion of his time, or, at any rate, without re-serving for so long a period as the Society requires. Has the clerk a reasonable prospect of obtaining the order? We must ask our readers to judge for themselves from the facts and decisions on this point, which we extract from the Digest:—

In *Ex parte Digby* (45 L. J., Ch. D. 692), a clerk, absent on account of illness for sixteen months, was ordered to serve an extra six months, although he had served an additional thirteen months.

In the case of *Ex parte Marshall* (22 W. R. 754), the clerk had served for five years except five months; he was taken ill and absent for five months and seventeen days; he was ordered to enter into fresh articles for the five months.

In the case of *Ex parte Moses* (43 L. J., Q. B. D. 13), the clerk had served three years out of a period of five years, when he was taken ill and invalided for eleven months; he then returned to work and completed his articles; the Court ordered him to serve the eleven months over again.

In another case, *Ex parte Rogers* (34 L. J., Q. B. D. 136), a clerk was invalided for one year out of five; before the expiration of his articles he applied to the Court for an order that the year during which he had been absent might be reckoned as actual service; the Court refused the application on the ground that it was premature: there is, however, no reason to doubt that even if the application had not been made till the expiration of the articles it would still have been refused.

In *Vaughan, Ex parte* (W. W. & D. 46), an articled clerk served with a barrister under 1 & 2 Geo. 4, c. 58, s. 2. He was unable to serve the last nine days of his time owing to dangerous illness. After his recovery he served the extra nine days. He was held entitled to be examined for his admission.

In *Trenchard, Ex parte* (9 L. R., Q. B. 405), in 1856 a son was articled to his father and duly served for two years, when, becoming out of health, he was recommended to follow some more active occupation, and in 1859 he joined the army. In 1870 his health was re-established and he entered into fresh articles with his father for five years, and served three years thereunder. He applied to the Court for an order that his two years' service under the original articles might be allowed to count as part of his five years' service under fresh articles. The Court held that the facts showed a mutual consent to the actual cancellation of the original articles, and that the case fell within 6 & 7 Vict. c. 73, s. 13, and granted the application.

Ex parte Beddoe (12 L. T. 711), and *Ex parte Matthews* (1 B. & Ad. 160), are decisions favourable to articled clerks. In these cases the clerks were considered as having sufficiently served their articles, although their services were very seriously interrupted by illness.

In *Ex parte De Fivas* (4 B. & S. 992), the time of

the articles had not expired. There had been a suspension of the service under the articles by reason of illness. An application was made to the Court to allow the clerk to enter into fresh articles for the residue of the time necessary to complete the five years' service. The application was granted.

With these cases before him any one of our readers, who has been so unfortunate as to suffer from illness during his articles for so long a time as to prevent his master answering conscientiously in the affirmative that the clerk has served his whole term of articles with him, and who is dissatisfied with the Law Society's ruling as to the time he must serve over again, will be able to see whether he is likely to gain any advantage by applying to the judge for an order respecting his right to be examined for admission on the rolls.

STATUTES FOR STUDENTS.

(*Continued from* p. 306.)

13 Eliz. c. 5 (*An Act against Fraudulent Deeds, Gifts, Alienations.*)

The Effect of the Statute.

It will be noticed that the words of the first section are very extensive, and apply to every kind of assurance of every kind of property, but in order to bring the section into operation, it is necessary to show that the intention of the party assuring was to defraud.

The following are some of the main points decided on this Act:—

(a) The question whether the transfer is fraudulent or not is one for a jury to decide, and in order to arrive at a decision the jury must "look at all the circumstances of the case to ascertain whether it was the settlor's intention to defeat, delay or hinder the person or persons seeking to upset the transfer or not."

(b) The term "voluntary" does not appear, but a "*voluntary*" transfer is deemed fraudulent and void under the Act as against *existing* creditors, whether the settlor was solvent at the time or not, if the remedy of the creditor was in any way delayed or hindered by the settlement.

(c) A voluntary transfer is fraudulent and void as against *subsequent* creditors, if they can prove a positive intention to defraud *future* creditors, or they can show that there are still debts existing which existed at the time the voluntary transfer was executed.

(d) The reservation in favour of the settlor of a power to revoke the instrument made by him is *primâ facie* evidence of an intention on the settlor's part to defraud creditors and others by placing his property out of their reach, while he all the time retains to himself full disposition over it.

(e) A transfer made by a debtor in favour of one creditor to defeat another creditor, even an execution creditor, is not fraudulent within the section, unless it can be shown that there was *mala fides* on the part of the transferee creditor. This was the point in the leading case on the statute, *Twyne's Case*, in which a transfer made to defeat an execution creditor was void, because there was *fraud*. (See further *infra*.)

(f) Unless, however, a person taking under an instrument made *pendente lite* for the purpose of defeating any process in the nature of execution can protect himself under sect. 5, such an instrument is void under sect. 1.

(g) Prior to 1 & 2 Vict. c. 110, a voluntary assignment of money, stock and choses in action which could not be taken under an execution, was not within the purview of the statute, as the property was not within the creditor's reach, and therefore he could not be defrauded. The same rule applied to a transfer of copyholds, which could not be taken under a judgment until this statute was passed. Such transfers are however—the property being now liable to execution—within the statute.

(h) A person may, by concurring with or acquiescing in a deed voidable under the statute, preclude himself and his representatives from impeaching the transaction.

(i) As property on which a man has a power of appointment, and an interest in default of appointment, is within the reach of his creditors, a voluntary instrument executing the power will be void against creditors and others if made with the intention of defeating them.

(j) A voluntary assignment of leaseholds can be impeached under the statute, even though there are burdensome covenants which the voluntary assignee will have to perform.

(k) Under this statute an instrument can only be upset by the persons who are defrauded thereby, and it is absolutely binding on the grantor himself, and he cannot avoid it even in equity, unless (i) the execution of it was obtained by fraud, or (ii) unless public policy demands its avoidance. In other cases equity stands neutral, following the rule "that if a man will improvidently bind himself by a voluntary deed, and not reserve a liberty to himself by a power of revocation, a Court of Equity will not loose the fetters he hath put upon himself, but he must lie down under his own folly." The settlor can, however, revoke the instrument if he *reserve to himself the right to do so*.

(l) As before shown (see (e), above), a transfer of property is not necessarily void under this section because the grantee does not take possession of the property, for in some cases the possession is entirely

consistent with the terms of the instrument; thus, in the case of a mortgage, the mortgagor retaining possession of the property does not vitiate the instrument, for not only would it very probably be a great personal inconvenience to the mortgagee to be compelled to occupy the property, but by his occupation the mortgagor might be deprived of the fruits of his trade, out of which he would repay the principal borrowed and interest, yet the transfer, if of personal chattels, and possession is not taken, may be void against the trustee in bankruptcy of the grantor, and against execution creditors under the provisions of the Bills of Sale Acts.

(m) So although a transfer may not be liable to be upset under the statute being considered, inasmuch as it was not fraudulently executed, yet it may be upset if within sect. 44, subs. iii. of the Bankruptcy Act, 1883.

Under this section, if the transfer was of goods used by the grantor in his trade or business (not including choses in action, except those due or growing due to the grantor in the course of his trade), and possession was not taken, or some dissent to the grantor remaining in possession made before the grantor's bankruptcy, the goods, &c. would pass to the trustee in bankruptcy as being within the order and disposition of the bankrupt as reputed owner, with the consent of the true owner.

(n) Independently of the Bills of Sale Acts and of the Bankruptcy Act, a fraudulent transfer which hinders or delays creditors cannot be sustained against the trustee in bankruptcy or liquidation, for the latter represents the creditors, for whose benefit 13 Eliz. c. 5 was made.

(o) All transfers fraudulent within the Act under consideration are deemed fraudulent within the Bankruptcy Act, and amount to an act of bankruptcy.

(p) Although a transfer may not be void under 13 Eliz. c. 5, yet it may amount to an act of bankruptcy within the bankruptcy laws, and be liable to be set aside as a fraudulent preference; thus, a transfer of property in consideration of an existing debt is not void within 13 Eliz. c. 5 if *bonâ fide* made; yet if of the whole of the debtor's property, or of the whole with a colourable exception only, it *would* amount to an act of bankruptcy, and *might* be set aside as a fraudulent preference if the debtor was made a bankrupt within *three months* after the transfer.

(q) So, again, a voluntary transfer which could not be upset under 13 Eliz. c. 5, owing to its not being fraudulently made, would be void under sect. 47 of the Bankruptcy Act, 1883, if the grantor became bankrupt within two years of the date of the transfer, and would be liable to be avoided if he became bankrupt within ten years, unless the persons claiming under the voluntary instrument were prepared to show that the grantor was, at the time of making the transfer, able to pay the debts without the aid of the property transferred, and that the property passed to the trustee of the settlement on the execution thereof.

(r) Again, a transfer of all a man's property to a trustee for the benefit of his creditors generally may not be void under 13 Eliz. c. 5, but it amounts to an act of bankruptcy under the Bankruptcy Act, and will be set aside in the Court of Bankruptcy if proceedings are taken within due time to make the grantor a bankrupt.

(s) Again, a transfer of property may be void against the trustee in bankruptcy if the grantor, owing to the fact that the grantee knew of an act of bankruptcy having been committed by the grantor when it would not be deemed fraudulent within 13 Eliz. c. 5.

(t) A voluntary transfer, although void either under 13 Eliz. c. 5 or the Bankruptcy Act, subsists for all other purposes, and so much (if any) of the property so transferred as is not required for the creditors or others defrauded will belong to the voluntary grantee.

(u) The operation of the Act is not limited to transfers by way of conveyance, but extends to judgments and executions which have been "contrived of malice." And if a creditor seize the goods of his debtor, and suffer them to remain long in his hands, this is evidence of fraud.

(v) A sheriff who knows that property has been the subject of a fraudulent transfer, &c. under the Act, is bound to seize the property under a writ of execution in his hands, and proceed to a sale, and if he neglects to do so he is liable to an action.

(x) On sect. 2 one remark only is necessary—that as the section subjects the parties to a fraudulent conveyance under the Act to criminal proceeding, a person may refuse to answer an interrogatory as to his knowledge of its fraudulent nature or otherwise.

(y) Sects. 3 and 4 call for no comment.

(z) On sect. 5 the following points are worthy of notice—

(aa) To bring the conveyance or assignment within the section, not only must it be *bonâ fide*, but it must also be made on some *good consideration;* and by the term good is here meant *valuable, i.e.*, money or money's worth, and therefore post-nuptial settlements made by a man as a provision for his wife and children, the consideration for which is meritorious and good enough, are yet not supported by value, and therefore not within the section. Ante-nuptial settlements, on the other hand, on the wife and children of the marriage, are deemed within the provisions of the protecting sections, even though the settlor was insolvent, unless it can be proved either that the wife was a party to the scheme of defrauding the creditors, as she would probably be held to be if the settlement was wholly disproportionate to the cir-

cumstances of the husband, or that under the circumstances the settlement was a "mere sham," as it would be held to be if made on a woman with whom the settlor had been living previously to marriage, or if it contained a power of revocation. Post-nuptial settlements made in pursuance of ante-nuptial articles are on a footing with ante-nuptial settlements.

(bb) Ante-nuptial settlements, or post-nuptial settlements in pursuance of ante-nuptial articles, in favour of collateral relations are deemed voluntary settlements only, unless when the marriage was in treaty express stipulations on behalf of the collaterals were made, the Court readily inferring such stipulations in favour of the children of a prior marriage.

(cc) A settlement made on a wife and children on separation between husband and wife is protected by the section if supported by valuable consideration, as if made to prevent proceedings in the Divorce Court being taken; the giving up by the wife of her right to institute proceedings against her husband clearly forming a sufficient consideration.

(dd) Mortgagees are within the section, and it is not necessary that they should take possession of the goods, as the possession of the mortgagor is consistent with the terms of the instrument; but if of personal chattels, the transfer must be duly executed and registered under the Bills of Sale Acts.

(ee) Creditors are protected by the section, as a debtor has a perfect right to prefer one creditor to another, but the transaction must be *bonâ fide*, and not have about it the suspicious circumstances which existed in *Twyne's Case*.

(ff) To prove the *bona fides* of the transactions, purchasers and creditors should take care to take possession of the goods, for allowing the grantor to keep possession is *primâ facie* evidence of *mala fides* and fraud; and unless there are other circumstances showing the *bona fides* in the parties concerned, the transaction would probably be held not to be within the protecting provisions of this section.

(As to mortgagees, see *supra*.)

(gg) The presumption of fraud raised by the grantor's possession is repelled if the transaction took place with notoriety.

(hh) To bring creditors within this section, Lord Coke's advice is (1) Let the transfer be made in a public manner, and before the neighbours, and not in privacy, for secrecy is a mask of fraud; (2) Let the goods and chattels be appraised by good people to the very value, and take a gift in particular in satisfaction of your debt; (3) Immediately after the gift take possession of the goods, for continuance in possession is a sign of trust.

(ii) A purchaser of real property without notice, conveyed in the first place to a purchaser with notice that it was made with intention to defraud, is protected; but a purchaser without notice of personal chattels, under similar circumstances, is not protected, for he gets no better title than his vendor had, as a general rule.

(jj) A person seeking protection under this section must have no notice, actual or constructive, of the intention to defraud, except in the case of a conveyance for value to defeat an execution, when the existence of notice does not affect the purchaser's rights.

(kk) A fraudulent transfer under the Act can be impeached at any distance of time.

The Act was confirmed by 14 Eliz. c. 11, s. 1, and made perpetual by 29 Eliz. c. 5, and has not since been repealed; but its provisions have been practically extended, as we have attempted to show, by the Bills of Sale Acts and the Bankruptcy Acts of the present reign.

NOTES ON THE FINAL.

We give below the list of successful candidates at the Pass Examination. The Honors List is due on Friday next, and will appear in the "Times" of Saturday.

When the Pass List appeared on the 20th ulto., we understand that the bearer of it was quite overcome by the number of anxious candidates who were awaiting its arrival; that he was, by the force which bore upon him, completely lifted from the ground, and that he had, in sheer self-defence, to let the list go from him. Surely the Law Society might adopt some method of announcing the result which would avoid all chance of such disgraceful scenes being perpetrated? The candidates cannot be blamed: they are, practically, invited to the Law Society's Hall, by being told that the list will appear at such an hour; and who can wonder if some 200 or 300 candidates, full of anxious hopes and fears, do that which on other occasions they would not be guilty of?

The evil, of course, would be prevented if the Law Society put up the lists without telling the candidates the time at which it may be expected. No information should be given the candidates as to the hour at which the list will be posted, and then all would be right.

A good many of those who were so eager to see the list must have been very disappointed when at last they got a sight of it, for we understand that the slaughter at the Final (Pass) was very great, and that about 80 candidates were postponed.

And we do not wonder at the result, for the Examination was a stiff one, and the equity paper must have sorely tried those of the candidates who

had spent no portion of their articles in London, and the common law paper must have perplexed nearly all.

Indeed the questions were of such a character throughout that no candidate passed unless he had some good natural abilities, *and* had worked earnestly and well; we feel certain that unless this combination existed failure must have attended the examinee's efforts.

The Common Law paper was, perhaps, better than usual, but still a weak paper. It did not give candidates a chance of showing their knowledge on this important branch of the law.

Question 21 ought most certainly not have appeared in this paper. What has a "pauper's settlement" to do with the principles of law and procedure in the Queen's Bench Division? The question is dealt with by the justices and not by the Queen's Bench Division, except by way of appeal. Such a question, if set at all, should appear in Paper VI., which deals with "Criminal Law and Practice and Proceedings before Justices of the Peace."

The only way we can account for such a question appearing in the paper, is the fact that there has quite recently been a case on the subject, which we give in another column of the present number, and which, though it is not yet reported in some way came to the Examiner's notice. Most candidates probably lost 10 marks over this question, and at a *Pass* Examination we say distinctly that such a question should not have been set.

And question 16—the first in the Common Law paper—was, to say the least, misleading, and we fear a good many candidates tripped over this question; and if the same candidate happened to know nothing of "pauper's settlements"—and well may he be excused ignorance on such a question—his chances of passing in the Common Law paper became very seriously handicapped.

The Conveyancing paper was a thoroughly good one.

The Bankruptcy paper was also a fair one, though by no means simple, and to have gained full marks, or anything like full marks, the student must have done his work thoroughly and well. When answering question 49 we ought, also, to have given another reason for the trade machinery and fixtures not passing to the trustee, namely, that they are not "goods and chattels" within the meaning of the order and disposition clause.

The Criminal paper was unnecessarily hard, the questions being for the most part framed on special statutory provisions.

The Extra Subject paper was a very good one.

The Honors questions are assuming a more reasonable form, and we have nothing but praise for the papers from beginning to end. They were sufficiently hard, but did not consist of head-notes to cases turned into questions, but were on principles of law which the well-read student ought to have come across in his reading. On such papers the Examiners will be able to find out without difficulty the best men; and this, we take it, should be the end and aim of papers set at an Honors Examination.

The Hilary Examination, 1886, is fixed for Tuesday and Wednesday, January 12 and 13. For details respecting the other Examinations of 1886 we refer our readers to the August Number of the Law Notes.

We append the list of successful candidates at the Pass Examination.

F. E. Adie, J. S. Atkinson.

W. E. Baddeley, M.A., H. S. Badger, D. J. Bailey, H. J. Barclay, C. J. Barlow, B. Barnett, W. Bentley, F. H. Bertie, G. Beves, F. J. Bevis, A. Billson, H. S. Blackham, T. A. Bland, S. B. Blinkhorn, A. H. Blomefield, G. E. Bouskell, W. la C. Bowden, W. Bramwell, H. E. Bristow, T. J. H. Brogden, C. Brodrick, A. D. Brooks, R. Brooks, G. A. Brown, E. L. Burgin, B. B. Burrows.

J. Calder, W. Calley, F. W. Capron, B.A., R. Carter, W. J. Catton, L. Chadwick, W. S. Chadwick, H. A. Chidson, E. T. Child, E. B. V. Christian, F. S. Clark, T. F. Clark, H. H. Coles, A. L. Collie, J. Cook, H. Cooke, R. E. Cooke, P. Corder, T. H. Cornish, H. Cotton, C. H. P. Crawfurd, B.A.

W. D'Angibau, B.A., J. O. Davidson, S. Davies, J. R. Davis, F. H. Day, B.A., H. F. Day, W. C. Deakin, F. J. Dickson, E. S. Dunhill.

H. R. Elton, W. G. Eyres.

L. H. Falck, W. C. Fisher, A. Fox, G. W. Fox, E. V. Frere, M. N. Fuller.

E. H. Galsworthy, B.A., R. A. Gardner, B.A., P. F. Gellatly, H. W. Gibbs, R. McC. Gloag, J. H. Goodden, J. O. Gosling, C. D. Gurney.

E. C. Haggerston, C. F. Haigh, E. M. Hansell, P. Hardy, B.A., P. J. Harvey, P. E. Hawkins, J. Haworth, F. J. Hayward, R. J. Heath, A. H. G. Heelas, A. M. Hemsley, B.A., W. H. Higgin, E. H. Higgins, A. Hinds, A. E. Hoare, J. A. Holdsworth, H. M. Holman, B.A., M. Holmes, A. E. Horrocks, H. A. Howe, T. C. Hughes, B.A., W. S. Hume, M.A., A. Hunt.

J. P. Ingham, A. M. Ingledew, G. N. Irving.

A. Jackson, F. M. Jackson, J. T. Jackson, B.A., A. S. Jecks, B.A., LL.B., H. A. Jessop, L. W. H. Jones, W. H. Jones.

E. Kempson, H. C. King, T. W. L. King.

W. N. Ladell, A. M. Laurence, F. E. Leech, J. F. Leigh, B.A., A. T. Longbottom, H. A. J. Lovett, B.A., E. B. Lupton, LL.B., C. E. Lutener, G. J. Lynskey.

H. B. Mace, E. Martineau, B.A., A. E. Masters, C. May, B.A., J. F. Millington, T. H. Morris, W. V. Mulcaster.

G. B. Nesfield, J. H. Nicholson, B.A., R. R. G. Norman.

P. E. O'Hare, F. Osborne.

H. Palmer, J. H. Parry, G. Passingham, A. S. Potter, H.

C. Prance, J. B. Pratt, M. I. Preston, B.A., H. T. Price, H. J. W. Pugh, A. Pulestone.

A. E. Ramsdale, A. E. Ratcliffe, A. L. Rayner, A. W. Read, D. W. Rees, G. E. Rigden, J. A. Rodway, P. F. Rouse, E. L. Rudge, M.A., P. J. Rutland.

E. S. Salaman, A. E. Savill, W. Senior, B.A., P. G. C. Shaw, A. Slater, W. Slater, E. R. Smetham, A. G. Smith, C. F. E. Smith, J. W. Smith, W. Smith, C. H. Snowball, S. C. Spreat, W. J. Standring, E. J. Stannard, H. N. Straus, C. W. V. Stewart, R. C. Suggett.

W. K. Taylor, E. G. Thorne, LL.B., J. Tonge, S. R. M. Townsend.

C. S. Walker, W. Ware, S. J. Warhurst, J. W. Wearing, S. Wells, F. L. Wheeler, G. H. White, J. du C. Wilkinson, B.A., B. R. W. Williams, C. H. Williams, A. H. Wilson, L. Wilson, W. C. T. Wilson, R. C. Winder, J. Y. Woollcombe, A. Wright, B.A., LL.B., A. Wright (of London), A. Wright (of Birmingham).

NOTES ON THE INTERMEDIATE.

We give below the list of successful candidates at the November Examination.

The questions at this Examination were one and all extremely straightforward and fair. With such questions the Examiners ought to adopt a very strict method of marking, otherwise they will let through many men who, if the hard character of the Final questions is to be continued, will have no chance of qualifying at their Final.

The two Examinations ought to be carried out on the same lines—if the Final becomes harder as time goes on, so ought the Intermediate to be comparatively harder. Some little time ago the Intermediate was—of course comparatively—harder than the Final; but things have taken a turn, and unless a high standard or a strict method of marking is required for the Intermediate, we see in the future a good deal of disappointment for those who now get through their Intermediate.

What we say is this. First, that any one who passes the Preliminary should be able, if he attends properly to his work, to pass his Intermediate and Final. Secondly, that he who passes the Intermediate, if he continues in the right path, should pass his Final. It is no kindness to pass a candidate at his Intermediate merely to keep him back at his Final; and in thus writing we are thinking only of the ultimate interests of articled clerks themselves. We wonder how many of the 271 successful candidates at the Intermediate whose names we print below will fail to qualify at the Final? We hope not one; but, looking to the Intermediate papers and to the Final papers of last month, we feel that such a hope is vain.

Questions at the Final are set so as to defy cramming. Mere question-and-answer knowledge is absolutely valueless at that Examination. Questions at the Intermediate Examination must be framed after the same style—so framed as to encourage Intermediate students to read the texts books selected in a thorough way.

It must not be supposed that all candidates passed the last Intermediate, far from it, there were over 60 postponed; still this is a small percentage, compared to what has happened at other Intermediate Examinations.

The next Intermediate is fixed for Thursday, January 14th, and the last day for giving ordinary notice is Monday, December 14th, and for giving renewed notice Wednesday, December 30th.

The other Examinations for 1886 will be held on the 8th April, 24th June, and 4th November.

The following gentlemen passed the November Intermediate:—

L. C. F. Abbot, H. E. T. Addison, F. A. Adeney, G. B. Aldridge, J. Anderson, C. F. Appleton, E. Ashton, R. R. Ashworth.

R. O. Backhouse, J. J. V. Baker, W. H. Bankes-Price, B.A., F. W. Barber, H. Barker, B.A., E. Barratt, H. Bastide, A. Bayley, H. H. Beale, D. J. M. Beatson, A. M. Beaumont, B.A., H. P. Becher, W. H. Bennitt, W. L. M. Benson, H. C. V. Bielby, F. M. Billson, J. L. Booth, B. Bottomley, W. G. Bradshaw, B.A., B. J. Bridgeman, H. G. Brown, T. W. Bryan, A. T. Bucknall, F. Budd, W. B. Bunting, A. Burrow, C. E. Burrows, E. M. Burton, A. M. Butler, J. H. S. Butt.

C. P. Cadle, E. M. Calvert, W. A. Campbell, G. E. Cartmel, H. L. Caunter, F. M. Chaldecott, W. E. Chancellor, F. R. Clarke, B.A., T. H. Clarke, W. A. B. Clarke, E. A. Cleverton, J. McDonald Cobban, E. Cockle, W. A. Coghlan, H. Colbeck, W. H. Coleclough, M. H. Cotton, B.A., G. Cox, D. C. Craigie, V. B. C. Crawshaw, H. M. Crookenden, B.A., E. Crosskey, B.A., B. H. Darbyshire, A. J. Darnell, G. H. Davis, H. J. Davis, G. M. Davey, F. P. Dighton, A. H. Dixon, F. C. Dixon, F. T. Dorman, J. G. Douglas, H. A. Dowson.

R. S. T. Eley, M. Ellis, C. G. Emerson, A. Evans.

J. Fardell, C. E. Farmer, R. Fielders, M. T. Fischer, B.A., W. C. Forman, E. R. Forster, B.A., J. A. Forward, J. Fowden, A. F. Frank, D. Freeman.

T. Garnett, B.A., R. M. B. Germon, T. H. Goodwin, H. Gosling, B.A., R. H. Graham, W. H. Green.

J. L. Hagger, H. P. H. Haggitt, B.A., R. B. W. Hall, W. C. Hall, G. A. Halsall, H. F. Harrison, H. M. S. Harrison, W. Heath, A. E. Heatley, W. H. Herbert, W. Hicks, P. F. Higginson, W. W. Higgs, R. Hill, T. S. Hillas-Drake, F. W. Holmes, H. S. Holt, B.A., W. E. Holt, W. J. Howard, J. P. Hubbersty, B.A., W. Hughes, R. Hutchinson, J. E. Huxtable.

R. G. Ives.

H. W. Jackson, F. W. Jay, B. E. Johnson, H. C. Johnson, J. S. Johnson, B. V. Jones, E. G. Jones, H. D. Jones, W. C. Jotcham, G. R. G. Joy.

W. E. Keefe, S. J. Kelsall, B.A., A. D. Kemp, W. G. K. Kenrick, J. B. Kershaw, C. H. Kesteven, J. B. Kesteven, F. L. Kingsford, J. H. Knight.

V. A. O. X. De Morton de La Chapelle, C. W. Lance, E. Leach, C. W. Letts, T. E. Lewin, C. P. Lewis, B.A., D. T. Lewis, G. H. Lewis, H. C. Lilly, G. T. Llewellyn, F. H. Lloyd, J. E. D. Longstaffe.

C. W. S. McHugh, K. Mackenzie, D. J. MacLeod, E. L. Manning, H. March, J. Marshall, R. Mashall, T. J. P. Masters, F. J. Mathews, W. H. Matthews, J. Mayson, J. E. Mead, S. Meal, A. W. Melhuish, F. E. Messent, R. J. G. Metcalfe, G. H. Mills, B.A., W. Morgan, A. Morice, M.A., E. Muncaster.

B. R. Nayler, P. T. Neve, H. C. Newhouse, G. D. Newton, L. W. Nicholson, E. P. Norris, J. W. Norton.

A. Ochse, J. B. Oldham, B.A., J. D. Ouvry, B.A., E. F. G. Oxley.

H. Palmer, H. W. Parker, J. W. Parkes, M. L. Parkin, M.A., S. O'Neill Peacocke, S. Peckover, G. D. Perks, F. Perrin, J. S. Philipps, T. F. Phillips, B.A., E. J. Pillers, C. F. Pollock, H. O. Powell, B.A., T. L. C. Preston, G. L. Price, R. E. Pritchard.

W. J. Rawlings, C. J. Rawlinson, A. J. Raybould, F. S. Rhodes, W. A. Ridley, R. Rimmer, C. W. Roberts, J. R. Roberts, W. P. Roberts, A. Rockstro, R. Rodgers, P. O. Rogers, W. A. F. Rogers, B.A., J. W. Rose, B.A., R. A. Rotherham, S. Russell, W. Russell.

W. J. Sacré, W. S. Salt, C. W. P. Seale, B. Shakespeare, H. Sharpley, J. W. Shaw, R. Simmons, J. P. Simpson, B.A., W. A. Siveter, M. A. Sleigh, A. Smith, B.A., C. J. B. Smith, K. M. Smith, R. L. M. Smith, P. M. Smyth, J. Stafford, L. G. Stephen, D. E. Stephens, B.A., J. W. E. Stirk, C. Stones, T. S. Strong, T. Swarbreck.

H. Taylor, J. H. Taylor, R. J. Thomas, J. A. P. P. Thompson, W. C. Thorne, T. B. Todd, T. G. Turner, E. A. Turnour, G. Tutin.

A. Unsworth.

F. L. Verley.

C. H. Ware, B.A., C. E. Warne, T. K. Waterhouse, T. Watson, E. J. T. Webb, G. W. Webber, W. G. Welch, R. Wheldon, C. A. White, F. S. White, F. Wicks, W. Wilkinson, W. E. Willans, R. R. Williams, R. H. Williams, W. J. Williams, G. S. Williamson, G. B. Wilson, B.A., M. Wise, J. Wood, T. S. Wood, E. S. Woodroffe, G. D. Woollcombe, W. Woolstencroft.

H. W. Yates, F. W. Yeates, H. J. Yeo, A. E. Young.

CORRESPONDENCE.

[*The Editor reserves to himself an absolute discretion with regard to the Correspondence addressed to him, and will not in any way hold himself responsible for the opinions or statements expressed or made.*]

Answers to Correspondents.

PAPINIAN.—If you will send a list of the books you think of reading we will tell you which are suitable. This is as far as we can go in these columns. You ought not to require more than four months with a reader, and during that time you would have to devote yourself to reading.

R. T. SMITH.—(1) Yes, if you add some work written for students on the Practice of the Courts. (2) No.

A. B.—Thanks for your letter. The secretary of the Law Society would alone be able to give you *reliable* information. We have no doubt that the certificate might be dispensed with.

JAMES TILLY, JUN.—The April Examination being fixed before the 19th, when your half term expires, you cannot go up till June.

LEX.—There could be no set off here, for the auctioneer would not deliver the goods till the price was paid, and he would not go into any question of set-off.

SHIP CANAL.—(1) Certainly the widow could sell under the Act of 1882. (2) We do not advise a substitution of the books you refer to. Read both. Any way, for your purpose we could not recommend your putting on one side the book recommended in the "Aids."

C. E. F.—We do not think that the farmer would have any right to the hare. The Act gives him the right to kill and take the ground game, but if killed by some one else having a concurrent right, the farmer would appear to be in the same position as he would have been before the Act. The object of the Act was to prevent farms being overrun by ground game.

L. C. HARVEY.—(1) Haynes' Cases might do, but for Honor purposes there is nothing like the leading cases themselves. (2) Yes, if he also read the Bankruptcy Act and Rules and the articles on them in the Law Notes. (3) Yes. (4) We could not advise this.

CURRIE.—Thanks; this is as you state.

JOHN F. EDELL.—You will find this point discussed in the Notes to *Corbyn* v. *French* in Tudor's Conveyancing Cases. So much of the gift will fail as would come out of the proceeds of the real and leasehold property.

J. SCHOLEFIELD.—(1) For High Honors, yes. For other purposes it is sufficient to know the principle and the decision. (2) For both purposes. (3) Here we cannot assist you except by advising you to analyse each case in the way we have dealt with some of the cases in the Law Notes. (See Vol. IV. p. 108.) (5) We should recommend your spending the last four months in town. If you intend to "coach," it is better to do so during the few months immediately preceding the Examination.

SIX-AND-EIGHTPENCE.—(1) Passes sentence. (2) Their heir will be found in the paternal line—the grandfather, if alive, and, if dead, their uncle, and so on. D. could not take until the paternal line had been exhausted, and the half-brothers E. and F. could not take in this case until after D.

DAMAGES.—Plaintiff must state the amount he claims. Jury may of course give less than claimed.

IN VINO VERITAS.—We think so.

CAMBRIS.—(1) Yes; the epitome of the Acts in the Guide is amply sufficient. (2) Half marks in each paper is the strict rule—but occasionally the course your letter suggests is, we believe, adopted.

F. M. MANN.—We are sorry that we cannot publish a supplement to second edition of the Student's Practice containing the "Practice of the County Courts," since the matter having been introduced in our third

edition of the Practice we could not ask a publisher to publish it in a separate supplement.

A. H. B. W.—Thanks.

Percy Clarke.—Thanks. We hope to comment on the subject of your letter in a future Number.

A Subscriber.—We are very sorry that we cannot understand your table.

[We apologize to those correspondents whose letters we are unable to deal with this month.]

Correspondents' Letters.

To the Editor of the "Law Notes."

The Honors Examination.

Sir,—As the subject of the Honors Examination is being much discussed at the present time, perhaps you can find room for this letter in your next issue.

While I fully agree with your correspondent, R. P. G., that the classification of second and third class honorsmen according to merit would be very advantageous to merit, and, I believe, only what is customary in Honors Examinations, I do not think he looks at the question from the right point of view when he speaks of the honorsmen being "content to depend for professional success on their learning and ability, without having recourse to any personal decoration, insulting to their brethren and unworthy of their profession."

The object of this "decoration" (whether hood or letters) would be, I take it, not so much to promote professional success by indicating superior ability as to show that its possessor had successfully passed through a certain course of study. I think this is the only practical way of looking at it. Men who have much more natural talent may not be entitled to the decoration, simply because they never went through the course of reading necessary to obtain it.

If a student reads for honors only with the object of taking a better place in his profession, I am afraid that, in these dark days, he will not receive any very direct reward—certainly, in ninety-nine cases out of a hundred, not from any solicitor with whom he may seek a clerkship or partnership. For this reason I think some direct reward should be given. R. P. T. appears to effectually dispose of the idea of a hood, but I do not at all see why a successful candidate should not be entitled to place certain letters after his name; this is the appropriate and usual reward in case of examinational success. Why a person because he has successfully passed through a certain course of study, and, therefore, obtained certain letters, should "of necessity render" himself "at once obnoxious and ridiculous in the eyes of the rest of the profession," or why these letters should be "insulting to (his) brethren and unworthy of profession," I wholly fail to see.

As "Rectus in Curia" says, prizes of one-g or two-guinea books would not do much in l larising the examination, but certificates like given by the universities ought certainly to be stituted for the miserable productions which the Society now so beneficently gives. Finally, a very clearly pointed out by a delegate at the r Law Students' Congress, the Law Society, their own showing, ought to expend upon art clerks a very much larger proportion of the fees by the latter than they at present do. Some of money might very properly go to found scholar of substantial value for first-class men. L. H

To the Editor of the "Law Notes."

The Honors Examination.

Sir,—I read all letters on this subject with n interest, but assuredly the interest has not been mixed with amusement at the suggestion of "Re in Curia" with regard to the hood. As a proof the hood would be but little appreciated or wor even the small minority of solicitors who practi advocates let me be allowed to call to the remembr of the author of the suggestion the number of risters and solicitors who have taken degrees at Universities, with and without honors, and let ask how many of these he has seen wearing t hoods in Court? It would certainly be a fitting n of distinction for the Law Society to grant life m berships to those who take honors; but there app to me to be a very easy way for candidates to n their success known more generally—namely, inserting in what class they have been placed in Law List, in the same way as public appointme and as barristers do the studentships they h gained from the various Inns of Court. To obta class certificate in the present Honors Examinat is a proof of no slight knowledge of law, and is tainly quite as much a guarantee of professi ability as to obtain a B.A. degree, and one wh should be more generally recognized instead of be a mere ephemeral event as at present. I do think that a prize of a guinea or so will add muc the popularity of the Examination among right-min articled clerks, nor in my opinion will the placing the second and third classes in order of merit; m over this plan is objectionable for other reasons. course the insertion in the Law List will not be immediate panacea for every evil, but I do thin is a step in the right direction, and of some pract good, and I hope to see some one making a start this way in the List for next year.

H. E. Dera

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deve's Railway Passengers' Law. 2nd Edition. is an extremely readable little treatise of 30 odd pages, on a subject interesting to sses of society. We are all so constantly t into conflict with that combined curse and g of the nineteenth century—a railway com- that a handy little book cannot but be ac- le. Whether lawyers will equally welcome written so plainly and so understandable of read and inwardly digest, we know not, for r many a layman might dispense with his s advice, if he had recourse to these pages in conflict with a company. We have care- ested the book as to recent cases, particularly quite lately-discussed and most important f unpunctuality, on which our readers may ber we had an article in the January Number ar. (See Vol. IV. p. 21.) Only one case do to find, *Cooper* v. *G. W. Rail. Co.*, decided he same time as *Woodgate* v. *G. W. Rail. Co.*

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bility of companies for articles left at their ooms is also dealt with, but not so satis- y; in the event of total absence of express con- as to liability, or ignorance of such conditions party depositing, it should be more clearly out that the company are liable as bailees d not as carriers: this point we also dealt Vol. III. p. 114. Altogether, we can heartily end this handy little treatise. It is published rs. MAXWELL & SON, Bell Yard, Temple Bar.

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maur's Principles of the Common Law. 4th —This appears to be a good edition of a very ork, well calculated to retain the position the s secured among students. It is published rs. STEVENS & HAYNES, Bell Yard, W.C.

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in's Land Tax. 3rd Edition. By SHIRLEY r, Esq., A.K.C., Assistant Registrar of Land his work deals with the subject of Land Tax y systematic and orderly manner. It first property chargeable, and then proceeds onsideration of assessment, collection, and on of the tax. A special chapter is devoted e Land Tax, and also to Land Tax in Scot- r. Bunbury has made some very useful s, amendments, and emendments in the fore us, and he must be congratulated on ublished a work which will be found ex- seful and reliable in practice in connection subject with which it deals. It is published . STEVENS & SONS, 119, Chancery Lane.

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e also received *The Principles of the Law of* FRANCIS T. PIGGOTT, Esq., M.A., LL.M., by Messrs. CLOWES & SON, Fleet Street.

LAW STUDENTS' DEBATING SOCIETIES.

THE ANNUAL GENERAL MEETING OF THE PRESTON LAW DEBATING SOCIETY.

The Preston Law Students held their Annual Meeting at the Preston Law Library, on Friday evening, November 13th, 1885, when John Tomlinson, Esq., Solicitor, of Preston and London, presided. After some special business had been transacted, including a resolution that the Lancaster Law Students' Society be invited to arrange two joint debates with the Preston Society, one to take place in each town, the report of the Committee was read by Mr. J. J. Rawsthorn. This showed that there were 60 members, consisting of 32 honorary and 28 ordinary, being an increase of 4 members on the previous session; that 27 meetings had been held, at which the average attendance had been 13; that 24 of the meetings had been presided over by solicitors, and 3 by ordinary members; that 18 legal and 6 general questions had been argued; that 102 legal queries had, in addition, been discussed; that during the session Messrs. T. Ward, J. Ingham, A. Bush, A. Colman, and W. T. Smith, had passed the Solicitors' Final Examination; Messrs. W. Gillow, G. Fernihough, and J. J. Rawsthorn had passed the Solicitors' Intermediate Examination; and Mr. R. A. McNab had passed the Roman Law Examination held by the Council of Legal Education of the Inns of Court; that Mr. J. Tomlinson had been the recipient of the Atkinson Gold Medal; that the conducting of some of the debates on the principle of Courts of Appeal and Divisional Courts had been attended with marked success; that in June last Messrs. A. Bush and R. A. McNab had attended the Law Students' Congress held in London as the Society's delegates; that Messrs. T. Ward, J. Ingham, W. Bramwell, and J. J. Rawsthorn represented the Society at the Manchester Society's Mock Trial; that Mr. J. Tomlinson had consented to deliver an address on some legal subject during the ensuing session; that an Honorary Members' debate had taken place in October last; and that the Law Students' Societies of other towns, the solicitors who had presided at the meetings, the Preston Law Society, and the retiring President, T. M. Shuttleworth, Esq., Solicitor, be thanked for the valuable services they had all rendered the Society. This report was adopted. Mr. W. Bramwell's balance sheet, showing a good balance in hand, was also adopted. The election of officers for the ensuing session was then proceeded with with the following results:—President, Thomas Humber, Esq., Barrister-at-Law; Hon. Secretary, Mr. Albert Bush; Hon. Treasurer, Mr. Samuel Davies; Committee, Messrs. F. Beaver, J. Bell, W. Preston, and J. J.

Rawsthorn. The name of the Society was changed to the "Preston Law Debating Society," and it was resolved that the Committee arrange for the holding of a Dinner.

Huddersfield Law Students' Society.

This Society's annual meeting was held on the 28th October at the rooms of the Huddersfield Law Society. Mr. T. S. Simpson occupied the chair. The Committee's report and Treasurer's balance sheet were read by Mr. J. W. Sykes (secretary), and J. H. Turner (treasurer), and adopted. It appeared from the report that the Society included 25 ordinary members, 37 honorary members, and 4 patrons. The report referred to the meetings that had been held, and to the success which attended the joint debates between the Society and the Halifax and Bradford Societies, and suggested that joint debates should be arranged for the coming session. The balance sheet showed that the Society was in a satisfactory financial position. The following officers were then elected: President, S. Learoyd, Esq., (re-elected); Vice-Presidents, Messrs. H. Barker, B. Crook, R. Welsh, G. L. Batley, and J. W. Piercy, LL.B.; Committee, Messrs. T. S. Simpson, B.A., J. W. Sykes, J. Bentley, T. H. Chambers, J. H. Turner, and H. W. Jackson; Hon. Treasurer, Mr. J. L. Sykes; Hon. Secretary, Mr. J. Hirst.

The Annual General Meeting of the Sheffield District Law Students' Society.

The Annual General Meeting of this Society was held at the Law Library, Sheffield, on Tuesday, the 3rd November, 1885, when the chair was taken by Herbert Bramley, Esq., Solicitor.

The Hon. Sec. presented and read the report of the Committee of the past year, which showed that there were 112 members of the Society, of whom 83 were honorary and 29 ordinary.

The Session had comprised 15 meetings (including the Annual and two Special Meetings).

During the past Session 8 members of the Society had passed the Intermediate Examination and one the Final Examination.

The balance sheet was also brought forward, which showed the Society to be in a good financial position.

The following officers were then appointed:—President: T. P. Smith, Esq., Solicitor. Vice-Presidents: B. P. Broomhead, Esq.; K. P. Bromley, Esq. and others. Hon. Treasurer: Mr. F. J. Hales. Hon. Sec.: Mr. F. A. Sarjeant. Committee: Messrs. J. C. Auty, F. Broomhead, J. W. Bromley, S. Hallam, and E. Hobson.

LEADING CASES IN RHYME.

III.

Scott v. Tyler.

Said Richard Kee, "I fear I go
Upon life's last eventful journey:
I wish to make my will, and so
Fetch hither my attorney.

"To my goddaughter I will give
A cool ten thousand, as I live—
A cool ten thousand! ah! but tarry—
I'd have you give it to her so,
That half of it shall elsewhere go
If, under age, she's asked to marry—
And she says 'Yes' when her 'ma says 'No.'
The other half, if she's alive,
And single still at twenty-five,
Shall then be hers."

He signed and died.

The maiden wept for him, but dried
Her eyes and joined for aye her lot,
Ere twenty-one, to Mr. Scott;
And her mother's consent she quite forgot!

Lord Thurlow sat in his Chancellor's chair,
Seven counsel in wigs and gowns were there.
The Court pronounced, "Had it been said
That Mrs. Scott should never wed
'Twould have been clean against the law.
But were it said that she should not
Be married to a Hottentot;
Or till her prudent mother saw
That she who was not yet of age
Had made for spouse selection sage,
Restrained so slight
Were good and right.
And since she chose to marry, while her
Worthy mother, Mrs. Tyler
Had not given her consent,
One half the lady's fortune went,
By Kee's last will and testament,
To wiser hands; and for the other,
That also goes unto her mother,
For that she cannot single be,
At five-and-twenty.
Proof there's plenty,
Since she's married and done for at twenty-three!

(So Mrs. Scott
She lost the lot.)

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